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Attorneys for Defendants
MCDONALD'S CORPORATION and
MCDONALD'S USA, LLC.

ORIGINAL
FILED

FEB - 2 2011

RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

DMR

MONET PARHAM, on behalf of herself and
those similarly situated,

Plaintiff,

v.

MCDONALD'S CORPORATION, and
MCDONALD'S USA, LLC.,

Defendants.

CV 11 0511
NOTICE OF REMOVAL OF ACTION TO
UNITED STATES DISTRICT COURT
UNDER 28 U.S.C. § 1332(d) and § 1441(b)
[REDACTED COPY]

TO THE CLERK OF THE UNITED STATES DISTRICT COURT, NORTHERN
DISTRICT OF CALIFORNIA, AND TO ALL PARTIES AND THEIR ATTORNEYS OF
RECORD:

PLEASE TAKE NOTICE that defendants McDonald's Corporation and McDonald's
USA, LLC (collectively, "McDonald's") hereby remove the above-titled action from the Superior
Court of the State of California for the County of San Francisco, where the state court action was
filed, to the United States District Court for the Northern District of California.

//

1 In support of this Notice, McDonald's alleges as follows:

2 1. On December 15, 2010, plaintiff Monet Parham ("Plaintiff") commenced the
3 aforementioned action in state court by filing a complaint ("Complaint") entitled "*Monet Parham,*
4 *on behalf of herself and those similarly situated, and her daughter, Maya, a minor through her*
5 *guardian ad litem Monet Parham v. McDonald's Corporation and McDonald's USA, LLC*"
6 bearing San Francisco County Superior Court Case No. CGC-10-506178. On January 5, 2011,
7 Plaintiff amended her Complaint ("Amended Complaint") to "*Monet Parham, on behalf of herself*
8 *and those similarly situated v. McDonald's Corporation and McDonald's USA, LLC,*" bearing the
9 same case number and court designation. The Amended Complaint alleges the following three
10 purported causes of action on behalf of Plaintiff and the proposed class: (1) Engaging in Unfair
11 Marketing and Business Practices; (2) Engaging in Unfair Methods of Competition and Unfair or
12 Deceptive Acts or Practices; and (3) Engaging in Unlawful Methods of Competition and Unfair or
13 Deceptive Acts or Practice. A true and correct copy of the Complaint and Amended Complaint
14 and all other state court pleadings are attached as **Exhibit 1-A** to the concurrently filed
15 Declaration of Palani Rathinasamy ("Rathinasamy Dec.") attached hereto as **Exhibit 1**.

16 2. Defendant accepted service of the Amended Complaint on January 5, 2011, by
17 agreement with Plaintiff. [See Rathinasamy Dec., Ex. B]. Therefore, this Notice of Removal,
18 filed on February 1, 2011, is timely filed pursuant to 28 U.S.C. §1446(b).

19 VENUE

20 3. The Northern District is the proper district for the removal of this action pursuant to
21 28 U.S.C. §§ 1441(a), 1446(a), and 84(a). This action was originally brought in the Superior
22 Court of the State of California for the County of San Francisco bearing San Francisco County
23 Superior Court Case No. CGC-10-506178.

24 CAFA JURISDICTION

25 4. This is a civil action over which this Court has original jurisdiction, and one in
26 which McDonald's may remove pursuant to the provisions of the Class Action Fairness Act
27 ("CAFA") 28 U.S.C. §§ 1332(d) and 1441(b) to this Court, in that Plaintiff is a citizen of a state
28 different from any defendant, the number of proposed class members exceeds 100 individuals, and

the amount in controversy exceeds the sum of \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(2); *Carvalho v. Equifax Info. Servs., LLC*, No. 09-15030, 2010 WL 5127974, at *4 (9th Cir. Dec. 16, 2010) (quoting *Lowdermilk v. U.S. Bank Nat'l Ass'n*, 479 F.3d 994, 997 (9th Cir. 2007)).

Plaintiff's Citizenship

5. At the time of commencement of the state court action and at the time of removal, Plaintiff was, and still is, a citizen of the State of California. *See* Am. Compl. ¶ 27 (“Parham is a parent residing in Sacramento, California”).

Defendant's Citizenship

6. At the time of commencement of the state court action and at the time of removal McDonald's Corporation and McDonald's USA, LLC were, and still are, Delaware corporations, with their principal places of business in the State of Illinois. [Declaration of Peter Sterling (“Sterling Decl.”), ¶ 3, filed concurrently herewith and attached as **Exhibit 2**.] Under 28 U.S.C. § 1332(c)(1), a corporation is deemed a citizen of “any State by which it has been incorporated and of the State where it has its principal place of business.” *See* 28 U.S.C. § 1332(c)(1).

7. McDonald's Corporation and McDonald's USA, LLC are citizens of the State of Delaware pursuant to 28 U.S.C. § 1332(c)(1) because they are corporations incorporated in and organized under the laws of the State of Delaware. [See Sterling Decl., ¶ 3.] Both McDonald's entities also are citizens of the State of Illinois, because their principal places of business are in the State of Illinois under the nerve center test. *See Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010). Specifically, both McDonald's entities' corporate headquarters are located in Oak Brook, Illinois. [See Sterling Decl., ¶ 3.]

8. Although Plaintiff misstates that McDonald's is incorporated in both Delaware and Illinois, she effectively acknowledges that Defendants are citizens of a state different from Plaintiff. *See* Am. Compl. ¶ 29 (“Defendants McDonald's Corporation and McDonald's USA, LLC, incorporated in Delaware and Illinois . . .”).

Number of Proposed Class Members Exceeds 100

9. Plaintiff in her Complaint concedes that “[t]he Parents class consists of at least

100,000 members.” *See* Am. Compl. ¶ 118.

Amount in Controversy Exceeds \$5,000,000

(a) Allegations in the Complaint

10. In the Complaint, Plaintiff asks the court, *inter alia*, to “[d]eclare that McDonald’s advertising acts and practices violate the California Unfair Competition Law and the California Consumer Legal Remedies Act,” and to “[e]njoin McDonald’s from continuing to advertise Happy Meals to California children featuring toys.” *See* Am. Compl., Relief Requested ¶¶ 2 – 3. Plaintiff also asserts that “the value of the claims to Plaintiff and to the class, and thus the amount in controversy, is far below \$75,000. No matter how evaluated, the amount in controversy falls far short of \$5,000,000.00.” *Id.* at ¶ 22.

(b) Legal Standard

11. “In actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation.” *Reyes v. Wells Fargo Bank, N.A.*, No. C-10-01667 JCS, 2010 WL 2629785, at *4 (N.D. Cal. June 29, 2010) (quoting *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 347 (1977)). “In calculating the value of an injunction, the amount in controversy is satisfied if either party can gain or lose the jurisdictional amount.” *Mora v. Harley-Davidson Credit Corp.*, No. 1:08-cv-01453 OWW GSA, 2009 WL 464465, at *5 (E.D. Cal. Feb. 24 2009) (citing *In re Ford Motor Co.*, 264 F.3d 952, 958 (9th Cir. 2001)). “Under this ‘either viewpoint rule’ the test for determining the amount in controversy is the pecuniary result to either party which the judgment would directly produce.” *Mora*, 2009 WL 464465 at *5 (citing *In re Ford Motor Co.*, 264 F.3d at 958).

12. Since CAFA’s passage, California federal courts have held that the “either viewpoint rule” now applies in class actions and that the amount in controversy to be considered where an injunction is sought includes “either the defendant’s cost of compliance with an injunction or the plaintiff’s benefit from that injunction.” *Tompkins v. Basic Res. L.L.*, No. CIV S-08-244 LKK/DAD, 2008 WL 1808316, at *4 (E.D. Cal. Apr. 22, 2008) (citing *In re Ford Co.*, 264 F.3d at 958)). Thus, it is proper for the Court to consider McDonald’s aggregate cost of compliance when determining whether it meets the jurisdictional amount. *See Yeroushalmi v.*

1 *Blockbuster, Inc.*, No. CV 05-225-AHM(RCX), 2005 WL 2083008, at *3 n.4 (C.D. Cal. July 11,
 2 2005) (“Prior to CAFA, the Ninth Circuit rejected use of the ‘either viewpoint rule.’ . . . It is clear
 3 that CAFA overrules the circuit’s position on this point insofar as qualifying class actions are
 4 concerned.”); *Tompkins*, 2008 WL 1808316, at *4 n.9 (“Now, however, ‘[i]t is clear that CAFA
 5 overrules the circuit’s position on this point insofar as qualifying class actions are concerned,’
 6 because CAFA explicitly allows aggregation of damages in determining the amount in
 7 controversy.”) (quoting *Yeroushalmi*, 2005 WL 20083008, at *3 n.4).

8 (c) McDonald’s Total Cost of Compliance

9 13. As set forth in the Declaration of Peter Sterling filed concurrently herewith,
 10 McDonald’s total cost of compliance with the prayed for injunction would be [REDACTED]
 11 [Sterling Dec. ¶ 7]. Specifically, it would cost McDonald’s [REDACTED] in television advertising
 12 [Sterling Dec. ¶ 31] and [REDACTED] in toy costs [Sterling Dec. ¶ 31] to comply with the prayed
 13 for injunction. This amount far exceeds the jurisdictional amount of \$5,000,000.¹

14 (d) Attorney’s Fees

15 14. “Attorney’s fees may be included in the amount in controversy if recoverable by
 16 statute or contract.” *See Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1034 (N.D. Cal. 2002)
 17 (citing *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1555-56 (9th Cir. 1998)); *see also Brady v.*
 18 *Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1010 (N.D. Cal 2002). Attorney’s fees are
 19 recoverable as a matter of right under Plaintiff’s California Consumer Legal Remedies Act
 20 (“CLRA”) claim. *See* Cal. Civ. Code § 1780(e) (“The court shall award court costs and attorney’s
 21 fees to a prevailing plaintiff in litigation filed pursuant to this section.”). Moreover, Plaintiff is
 22 specifically seeking attorney’s fees in this action. *See* Am. Compl., Relief Requested ¶ 4 (“Award
 23 costs and attorney’s fees, in an amount to be determined at trial.”) In CLRA cases, the awarded
 24 attorney’s fees can be in the hundreds of thousands of dollars for single plaintiff cases, and over a
 25 million dollars in CLRA class actions. [*See Rathinasamy Dec ¶ 4, Ex. 1-C*]. Here plaintiff is
 26 asking for state-wide injunctive relief and the proposed class numbers more than 100,000

27 ¹ The costs in this paragraph are proprietary and have been redacted pursuant to McDonald’s
 28 Administrative Motion to Seal filed herewith. An unredacted copy has been filed with that
 motion.

1 individuals. Plaintiff therefore could seek to recover as much as \$1 million in fees.²

2 CONCLUSION

3 15. Based on the foregoing, this Court has jurisdiction over the state court action under
4 the provisions of 28 U.S.C. § 1332(d), in that Plaintiff is a citizen of a state different from any
5 defendant, the number of proposed class members exceeds 100 individuals, and the amount in
6 controversy exceeds the sum of \$5,000,000, exclusive of interest and costs. Accordingly, the state
7 court action is properly removed to this Court pursuant to the provisions of 28 U.S.C. §§ 1441 and
8 1446.

9 NOTICE TO STATE COURT

10 16. A true and correct copy of the Notice of Removal has been served on the Plaintiff
11 and this redacted version has been filed with the Clerk of the Superior Court of the State of
12 California, County of San Francisco, as required by law.

13 DATED: February 2, 2011

Respectfully submitted,

14 ALSTON & BIRD LLP

15
16 By: 

17 Balani P. Rathinasamy
18 Attorneys for Defendants
McDONALD'S CORPORATION and
McDONALD'S USA, LLC

19 LEGAL02/32444399v1
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27 ² While Plaintiff could seek to recover \$1 million in attorney's fees pursuant to the attached
28 jury verdicts, Defendants reserve the right to challenge any amount that Plaintiff might claim in
attorney's fees in the future.

EXHIBIT 1

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Attorneys for Defendants
MCDONALD'S CORPORATION and
MCDONALD'S USA, LLC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MONET PARHAM, on behalf of herself and
those similarly situated,

Plaintiff,

v.

MCDONALD'S CORPORATION, and
MCDONALD'S USA, LLC.,

Defendants.

Case No.:

**DECLARATION OF PALANI P.
RATHINASAMY IN SUPPORT OF
McDONALD'S NOTICE OF REMOVAL**

I, Palani P. Rathinasamy, declare:

1. I am an attorney at Alston & Bird LLP, attorneys of record for defendants McDonald's Corporation and McDonald's USA, LLC in this action. I make this Declaration in support of the Notice of Removal. I have personal knowledge of the following facts and if called as a witness would and could testify competently thereto.

2. Attached hereto, and incorporated herein as though fully set forth at length, as **Exhibit A** to this Declaration are true and correct copies of all of the pleadings filed in *Monet Parham et al. v. McDonald's Corporation and McDonald's USA LLC*, San Francisco Superior

1 Court Case No. CGC-10-506178.

2 3. By agreement of counsel, McDonald's accepted service of the Amended Complaint
3 on January 5, 2011.

4 4. Attached hereto, and incorporated herein as though fully set forth at length, as
5 **Exhibit B** to this Declaration are true and correct copies of the jury verdicts referenced in the
6 Notice of Removal.

7 I declare under penalty of perjury of the laws of the United States that the foregoing is true
8 and correct. Executed this 2nd day of February 2011, at Menlo Park, California.

9
10
11
12 LEGAL02/32443576v1

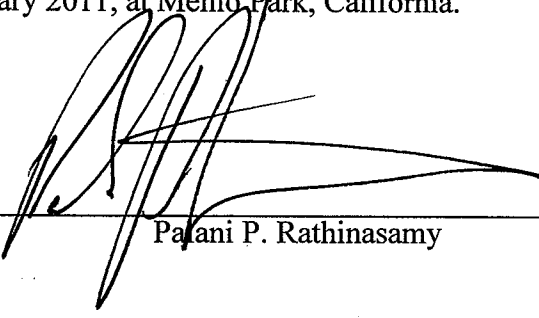
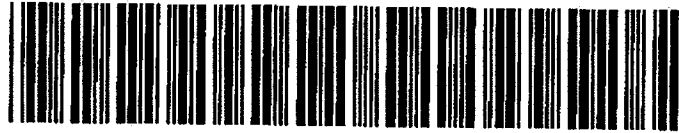

Palani P. Rathinasamy

EXHIBIT A



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Dec-15-2010 9:47 am

Case Number: CGC-10-506178

Filing Date: Dec-15-2010 9:28

Juke Box: 001 Image: 03062803

COMPLAINT

JET PARHAM, ON BEHALF OF HERSELF AND THOSE et al VS. MCDONALD'S CORPORA

001C03062803

Instructions:

Please place this sheet on top of the document to be scanned.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): George Richard Baker (SBN 224003) 2229 First Avenue North The Black Diamond Building Birmingham, Alabama 35203 TELEPHONE NO.: 205.241.9608 FAX NO.: 205.449.0050		CM-010 FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; text-align: center;">FILED</div> Superior Court of California County of San Francisco <div style="font-size: 1.2em; text-align: center;">DEC 15 2010</div> CLERK OF THE COURT BY: <u>Parham, Matt</u> Deputy Clerk	
ATTORNEY FOR (Name): Monet and Maya Parham and those similarly situated SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		CASE NAME: Monet Parham, et al. vs. McDonald's Corp. et al.	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
CASE NUMBER <div style="font-size: 1.5em; font-weight: bold;">CGC - 10-506178</div>		JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/D/W/D (23) Non-P/PI/D/W/D (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PI/D/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): Three
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 15, 2010

George Richard Baker

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

BY FAX

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)-Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	Construction Defect (10)
	Contract/Warranty Breach-Seller Plaintiff (not fraud or negligence)	Claims Involving Mass Tort (40)
	Negligent Breach of Contract/Warranty	Securities Litigation (28)
Other P/DPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09)	Environmental/Toxic Tort (30)
Asbestos (04)	Collection Case-Seller Plaintiff	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Asbestos Property Damage	Other Promissory Note/Collections Case	Enforcement of Judgment
Asbestos Personal Injury/Wrongful Death	Insurance Coverage (not provisionally complex) (18)	Enforcement of Judgment (20)
Product Liability (not asbestos or toxic/environmental) (24)	Auto Subrogation	Abstract of Judgment (Out of County)
Medical Malpractice (45)	Other Coverage	Confession of Judgment (non-domestic relations)
Medical Malpractice-Physicians & Surgeons	Other Contract (37)	Sister State Judgment
Other Professional Health Care Malpractice	Contractual Fraud	Administrative Agency Award (not unpaid taxes)
Other P/DPD/WD (23)	Other Contract Dispute	Petition/Certification of Entry of Judgment on Unpaid Taxes
Premises Liability (e.g., slip and fall)	Real Property	Other Enforcement of Judgment Case
Intentional Bodily Injury/DPD/WD (e.g., assault, vandalism)	Eminent Domain/Inverse Condemnation (14)	Miscellaneous Civil Complaint
Intentional Infliction of Emotional Distress	Wrongful Eviction (33)	RICO (27)
Negligent Infliction of Emotional Distress	Other Real Property (e.g., quiet title) (26)	Other Complaint (not specified above) (42)
Other P/DPD/WD	Writ of Possession of Real Property	Declaratory Relief Only
Non-P/DPD/WD (Other) Tort	Mortgage Foreclosure	Injunctive Relief Only (non-harassment)
Business Tort/Unfair Business Practice (07)	Quiet Title	Mechanics Lien
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Other Commercial Complaint Case (non-tort/non-complex)
Defamation (e.g., slander, libel) (13)	Unlawful Detainer	Other Civil Complaint (non-tort/non-complex)
Fraud (16)	Commercial (31)	Miscellaneous Civil Petition
Intellectual Property (19)	Residential (32)	Partnership and Corporate Governance (21)
Professional Negligence (25)	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Other Petition (not specified above) (43)
Legal Malpractice	Judicial Review	Civil Harassment
Other Professional Malpractice (not medical or legal)	Asset Forfeiture (05)	Workplace Violence
Other Non-P/DPD/WD Tort (35)	Petition Re: Arbitration Award (11)	Elder/Dependent Adult Abuse
Employment	Writ of Mandate (02)	Election Contest
Wrongful Termination (36)	Writ-Administrative Mandamus	Petition for Name Change
Other Employment (15)	Writ-Mandamus on Limited Court Case Matter	Petition for Relief From Late Claim
	Writ-Other Limited Court Case Review	Other Civil Petition
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal-Labor Commissioner Appeals	

George Richard Baker, Esquire (SBN 224003)
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 2229 1st Avenue North
 Birmingham, AL 35203
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FILED
 Superior Court of California
 County of San Francisco

DEC 15 2010

Stephen Gardner, Esquire (*pro hac vice* pending)
 Seema Rattan, Esquire (*pro hac vice* pending)
 Center for Science in the Public Interest
 5646 Milton Street, Suite 211
 Dallas, TX 75206
 214.827.2774 (telephone)
 214.827.2787 (facsimile)

CLERK OF THE COURT
 BY: Parham Nott
 Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

MAY 20 2011 9⁰⁰ AM

DEPARTMENT 212

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR SAN FRANCISCO COUNTY

CGC-10-506178

MONET PARHAM, on behalf of herself
 and those similarly situated, and her
 daughter, MAYA, *a minor through her*
guardian ad Litem Monet Parham

Plaintiffs,

vs.

McDONALD'S CORPORATION and
 McDONALD'S USA, LLC,

Defendants.

CASE NO.:

CLASS ACTION COMPLAINT FOR
 VIOLATIONS OF THE UNFAIR
 COMPETITION LAW, THE
 CONSUMERS LEGAL REMEDIES ACT
 AND DECLARATORY AND
 INJUNCTIVE RELIEF

Plaintiffs Request Jury Trial on all Issues
Triable by a Jury

BY FAX

INTRODUCTION

1. Plaintiffs, by and through undersigned counsel, bring this class action both on their own behalf and on behalf of the classes comprised of all other individuals similarly situated within the State of California, pursuant to California's Unfair Competition Law, Business and Professions Code §§ 17200 *et seq.* ("UCL"), and California's False Advertising Law, Business and Professions Code § 17500, *et seq.* ("FAL"), and The Consumers Legal Remedies Act Civil Code § 1750, *et seq.* ("CLRA") against McDonald's. Plaintiffs assert that Defendants engage in the unfair, unlawful,

CLASS ACTION COMPLAINT FOR VIOLATIONS OF
 THE UNFAIR COMPETITION LAW, THE
 CONSUMERS LEGAL REMEDIES ACT AND
 DECLARATORY AND INJUNCTIVE RELIEF

1 deceptive and fraudulent practice of promoting and advertising McDonald's Happy
2 Meal products to very young California children, using the inducement of various toys.

3 2. McDonald's exploits very young California children and harms their
4 health by advertising unhealthy Happy Meals with toys directly to them. Children eight
5 years old and younger do not have the cognitive skills and the developmental maturity
6 to understand the persuasive intent of marketing and advertising.

7 3. Thus, McDonald's advertising featuring toys to bait children violates
8 California law because it is inherently deceptive and unfair.

9 4. McDonald's advertising is also unfair to its competitors, who do not
10 choose to attract very young children with the lure of a toy.

11 5. According to the Institute of Medicine, "Before a certain age, children lack
12 the defenses, or skills, to discriminate commercial from noncommercial content, or to
13 attribute persuasive intent to advertising. Children generally develop these skills at
14 about age 8 years, but children as old as 11 may not activate their defenses unless
15 explicitly cued to do so."¹

16 6. The United States Supreme Court noted this year that children "have lack
17 of maturity and an underdeveloped sense of responsibility; they are *more vulnerable or*
18 *susceptible to negative influences and outside pressures*, including peer pressure; and
19 their characters are not as well formed."²

20 7. Federal law has a long history of recognizing that advertising that is not
21 understood to be advertising is misleading to consumers, and intervening to prevent
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25 ¹ INSTITUTE OF MEDICINE, FOOD, MARKETING TO CHILDREN: THREAT OR
26 OPPORTUNITY? ES-4 (National Academics Press 2006).

27 ² *Graham v. Florida*, 130 S.Ct. 2011, 2026-2027 (2010) (emphasis added; internal
28 quotations and citations omitted). The Court was speaking of teenagers, but the
comments apply with even more force to younger children.

1 deception.³ "These laws all stem from the principle that the public is entitled to know
2 when and by whom it is being persuaded."⁴

3 8. Children under the age of eight do not understand advertising; they lack
4 the ability to perceive its persuasive intent. When exposed to advertising, children
5 under eight lack the skills to know when and by whom they are being persuaded.

6 9. Children nonetheless influence the purchasing decisions of their parents.
7 McDonald's exploits that influence, by bombarding children with advertisements for
8 Happy Meals with toys, knowing that it will result in kids nagging parents to purchase
9 nutritionally poor Happy Meals for their children.

10 10. Internal McDonald's documents prove its intent to subvert parental
11 authority. One internal document says that "[r]esearch shows when families with kids
12 visit McDonald's, the kids alone decide on McDonald's in 53% of the cases ...[o]n all,
13 they [children] influence 95% of family visits to McDonald's."⁵ McDonald's thus
14 affirmatively and knowingly targets the most vulnerable class of consumers, very
15 young children, in order to insidiously and deceptively access parents' wallets.

16 11. The Federal Trade Commission reported to the President that
17 "[m]arketing directly to children essentially is an end-run" around the parents' role,
18 and should be stopped.⁶

19
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21 ³ See e.g. 47 U.S.C. § 317.

22 ⁴ Richard Kielbowicz and Linda Lawson, *Unmasking Hidden Commercials in*
23 *Broadcasting: Origins of the Sponsorship Identification Regulations, 1927-1963*, 56 Federal
Communications Law Journal 327, 330 (2004).

24 ⁵ Source: *McDonald's OPNAD Newsletter*, a "publication for McDonald's
25 owner/operators.

26 ⁶ Federal Trade Commission, "Marketing Violent Entertainment to Children: A
27 Review of Self-Regulation and Industry Practices in the Motion Picture, Music
28 Recording & Electronic Game Industries" at 54 (2000). Although this comment was in
the context of a different form of different form of harmful marketing practices, the
finding applies equally here. The report is available at www.ftc.gov/reports/violence/vioreport.pdf.

12. The White House Task Force on Childhood Obesity has stated that restaurants "have an important role to play in creating a food marketing environment that supports, rather than undermines, the efforts of parents and other caregivers to encourage healthy eating among children and prevent obesity."⁷

13. Experts, including the American Psychological Association, agree with the FTC's and the White House Task Force's position.

14. By advertising that Happy Meals include toys, McDonald's has helped create, and continues to exacerbate, a super-sized health crisis in California. Increasing numbers of children are making poor nutritional choices, developing unhealthy eating habits that will follow them into adulthood, and becoming obese.

15. Most Happy Meals are too high in calories, saturated fat, and sodium to be healthful for very young children. Most Happy Meals lack healthful servings of fruits and vegetables and have little dietary fiber and whole grains. According to the Institute of Medicine, "Diets that are high in calories and other constituents such as saturated fats and low in certain nutrients are putting our children and youth at risk for diseases later in life, such as heart disease, stroke, circulatory problems, some cancers, diabetes, and osteoporosis."⁸

16. Advertising poor-nutrition Happy Meals with toys to children is a contributing factor in this crisis.

17. These marketing practices are unfair to parents as well as their children because they interfere with the parents' ability to instill good eating habits in their children and because they cause conflict between parents and their children.

18. McDonald's is engaged in a highly sophisticated scheme to use the bait of toys to exploit children's developmental immaturity and subvert parental authority.

⁷ White House Task Force on Childhood Obesity (2010). "Solving the problem of childhood obesity within a generation." Available at www.letsmove.gov/tfco_fullreport_may2010.pdf.

⁸ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY? E-1 (National Academies Press 2006).

1 That scheme is designed to sell and get children to eat nutritionally unbalanced Happy
2 Meals, which in turn promote obesity and other diet-related diseases. McDonald's
3 advertising of Happy Meals with toys is deceptive and unfair to children, unfair to
4 parents, and in violation of California law. For these reasons, plaintiffs seek the relief set
5 forth herein.

6 JURISDICTION AND VENUE

7 19. This Court has jurisdiction over Plaintiffs' claims.

8 20. The claims made by the Plaintiffs on behalf of themselves and other
9 members of the Class they purport to represent are brought pursuant to the UCL, the
10 FAL and the CLRA for injunctive relief but not for restitution, penalties, or damages.
11 Thus, the value of the claims to plaintiffs and to the class, and thus the amount in
12 controversy, is far below \$75,000. No matter how evaluated, the amount in controversy
13 falls far short of \$5,000,000.00. Accordingly, plaintiffs could not elect to bring this case in
14 federal court because there is an insufficient amount in controversy to evoke federal
15 jurisdiction.

16 21. The jurisdiction and venue of this action in the Superior Court in and for
17 the County of San Francisco is based upon California Code of Civil Procedure § 410.10.

18 22. Venue is appropriate in the County of San Francisco pursuant to
19 California Code of Civil Procedure § 395. Venue in this Court is proper in that
20 McDonald's transacted business in California and the conduct complained of occurred
21 in California.

22 23. Plaintiff files her affidavit showing these facts concurrently with the
23 Complaint as required by CC § 1780(c).

24 CONDITIONS PRECEDENT

25 24. All conditions precedent have been performed or have occurred.
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27
28

PARTIES

25. Monet Parham ("Parham") is a parent residing in Sacramento, California, with children ages two and six. Parham brings this action on her own behalf and as next friend to Maya.

26. Parham's daughter Maya, age six lives with her mother, father, and sister.

27. Plaintiffs have standing to bring this case on their own behalf because they have jointly lost money or property because of Defendants' activities, and therefore have suffered an "injury in fact."

28. Defendants McDonald's Corporation and McDonald's USA, LLC (collectively "McDonald's"), incorporated in Delaware and Illinois, respectively, own and operate the largest and most successful fast food chain in history.

FACTS

I. Definitions

29. The term "advertising" includes all forms of marketing in all forms of media and venues, including without limitation: print advertisements, television and radio commercials, product labels, magazines, use of licensed characters, use of celebrities, viral marketing, web sites, signage at restaurants, toys, advergames, sponsorships, school-based marketing (such as book covers and sponsored educational material), and kids clubs.

30. "Class Period" is the period from December 15, 2006 and to the date of class certification, or as otherwise determined by the Court.

31. "Happy Meals" are the meals that McDonald's produces for, and markets directly to, very young children and that are accompanied by a free toy.

32. Unless otherwise stated, all references to "children" in this complaint means California-resident children eight years or younger.

1 **II. Background: A Children's Health Crisis of Epidemic Proportions**

2 33. Increasing numbers of children in California are unhealthy. Many
3 children are becoming overweight or obese and are suffering from diet-related health
4 problems, like diabetes.⁹ High-sodium diets boost blood pressure, even in very young
5 children, and saturated fat and cholesterol start clogging arteries in children and
6 youths.

7 34. Diet-related health problems persist into adulthood. The eating habits and
8 attitudes about nutrition that children adopt often extend into adulthood.¹⁰

9 35. Currently, 73% of adults are overweight, obese, or extremely obese.¹¹ A
10 growing number of children are overweight, obese, or suffer from diet-related health
11 problems, which is an indication that the number of adults with these problems will
12 likely grow. This will further burden California's health-care system, which is already
13 overwhelmed.¹²

14 36. In California, an increased number of children have poor diets, due in
15 significant part to poor-nutrition foods such as Happy Meals. Happy Meals and other
16 poor-nutrition foods often replace healthier foods and beverages in children's diets and
17 accustom children to seeking and eating poor-nutrition foods even outside the fast-
18 food-restaurant venue. For example, only 2% of children eat a healthy diet consistent
19 with the main dietary recommendations of the U.S. Department of Agriculture.¹³ Only
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21 ⁹ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
22 2-4 (National Academies Press 2006).

23 ¹⁰ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
24 E-1 (National Academies Press 2006).

25 ¹¹ Results from the 2005-2006 National Health and Nutrition Examination Survey
(NHANES) available at www.cdc.gov/nchs/data/hestat/overweight/overweight_adult.htm.

26 ¹² INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
27 5-28 (National Academies Press 2006).

28 ¹³ K. Munoz, S. Krebs-Smith, R. Ballard-Barbash and L. Cleveland, *Food Intakes of
U.S. Children and Adolescents Compared with Recommendations*, 100 PEDIATRICS 323 (1997).

1 6% of children meet the USDA recommended limit of saturated fat intake; only 30% of
 2 children consume the USDA-recommended number of servings of milk each day; and
 3 only 15% eat the daily recommendation of fruit.¹⁴

4 37. The great majority of Happy Meals sold in California harm children's
 5 diets, and do not provide the nutrients required for healthy growth and development.
 6 Consumption of poor-nutrition food such as the contents of Happy Meals contributes to
 7 the development of obesity, high blood pressure, diabetes, and obesity-related illnesses
 8 in children. Even if children consume healthy foods at other times, consumption of
 9 Happy Meals is harmful.

10 III. Advertising Happy Meals with Toys to Children is Unfair & Deceptive

11 A. Targeting Children

12 38. Most California children have no concept of what it means to eat a healthy
 13 diet.

14 39. Children rely on outside sources, including parents, friends, and the
 15 media, full of powerful advertisements for poor-nutrition Happy Meals, to influence or
 16 determine what they should eat.¹⁵

17 40. "Food and beverage marketing practices geared to children and youth are
 18 out of balance with healthful diets, and contribute to an environment that puts their
 19 health at risk."¹⁶

20 41. The marketing of poor-nutrition Happy Meals to California children
 21 contributes to their desire to consume and request these products. This type of
 22
 23

24 ¹⁴ U.S. Department of Agriculture, Office of Analysis, Nutrition and Evaluation.
 25 CHANGES IN CHILDREN'S DIETS: 1989-1991 to 1994-1996 (USDA 2001).

26 ¹⁵ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
 27 5-28 (National Academies Press 2006).

28 ¹⁶ Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content, Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at 36 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage) (forthcoming).

1 marketing affects children's short-term and long-term dietary intakes and their
2 attitudes about nutrition.¹⁷

3 42. The marketing of poor-nutrition Happy Meals to children in California is
4 pervasive, with over 1300 McDonald's restaurants in California alone.

5 43. McDonald's markets poor-nutrition Happy Meals to California children
6 through television advertisements, store signage, billboards, Web sites, branded
7 merchandise, product packaging, magazines, and in schools and other venues.

8 44. Companies – with McDonald's as one of the leaders – employ a myriad of
9 methods to determine what children prefer, how to make children like their products,
10 and how to formulate their products, so they appeal almost irresistibly to children.
11 These methods include: conducting consumer studies, observing children playing and
12 using various products in their homes and schools, and using children as informants on
13 what other children like and do not like.¹⁸

14 45. "Total U.S. expenditures on marketing to children are estimated at \$15-17
15 billion. It is hard to imagine (and certainly difficult to estimate) the total economic
16 stakes involved for businesses that depend upon child purchases and child influence on
17 parental spending."¹⁹

18 46. After studying the effect of marketing on children, the American
19 Psychological Association (APA) issued a report on the issue. That report found,
20 "Because young children lack the cognitive skills and abilities of older children and
21 adults, they do not comprehend commercial messages in the same way as do more
22 mature audiences, and, hence, are uniquely susceptible to advertising influence. A
23

24 ¹⁷ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
25 5-35-38 (National Academies Press 2006).

26 ¹⁸ JULIET B. SCHOR, BORN TO BUY, 120-122 (Scribner 2004).

27 ¹⁹ Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content,*
28 *Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at
36-37 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage)
(forthcoming).

1 substantial body of research evidence documents age-related differences in how
 2 children understand and are affected by television advertising. This evidence has
 3 formed the basis for a wide range of policies in the United States designed to protect
 4 children from advertising the foundation of a broad societal consensus that children
 5 require special treatment and protection from the unbridled efforts of the economic
 6 marketplace.”²⁰

7 47. The APA also noted, “An important side effect of the influence of
 8 advertising on children’s desire for products is the parent-child conflict that emerges
 9 when refusals occur in response to children’s purchase-influence attempts. Parents
 10 obviously cannot honor all purchase requests triggered by television advertising, given
 11 the volume of commercials that the average child sees. In one study, more than half of
 12 children reported arguing or becoming angry when a toy request was denied; in
 13 another, the study observed high rates of child disappointment and anger in response
 14 to the majority of parent refusals for cereal requests at the supermarket. Other studies
 15 confirm these patterns. In sum, the frequent purchase requests associated with
 16 children’s advertising exposure may place a strain on parent-child interaction.”²¹

17 48. Professor Juliet Schor, a noted expert on consumerism, economics, and
 18 family studies, discusses the tension between the responsibilities of parents to make
 19 efforts to guide their children’s eating practices and the efforts of marketers to
 20 undermine those very efforts. She notes that “a major thrust of contemporary marketing
 21 to children is the interposition of the marketer between the parent and child. Marketers
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 23
 24

25 ²⁰ American Psychological Association, REPORT OF THE APA TASK FORCE ON
 26 ADVERTISING AND CHILDREN at 1 (2004), available at [www.apa.org/pi/families/
 resources/advertising-children.pdf](http://www.apa.org/pi/families/resources/advertising-children.pdf) (internal citations omitted).

27 ²¹ American Psychological Association, REPORT OF THE APA TASK FORCE ON
 28 ADVERTISING AND CHILDREN at 11 (2004), available at [www.apa.org/pi/families/
 resources/advertising-children.pdf](http://www.apa.org/pi/families/resources/advertising-children.pdf) (internal citations omitted).

1 create utopian spaces free of parents and employ insidious dual-messaging strategies.
 2 Ads position the marketer with the child against the parent".²²

3 49. Professor Schor continues by noting "the undeniable fact of parental
 4 responsibility does not imply that it's only parents who should be held responsible. The
 5 complexities of life today render that approach far too simple-minded."²³

6 50. Thus, the toy may appear to be "free," but consuming these meals has a
 7 high actual health cost.

8 51. Moreover, according to Roy Bergold, who served as McDonald's
 9 advertising head for twenty-nine years, "the toys usually aren't free—they're priced
 10 into the meal and companies have found that kids are a lot more tempted by the toys
 11 than the food."²⁴

12 52. For all of these reasons, McDonald's unfair and deceptive practice of
 13 advertising Happy Meals to children by using the lure of a toy directly and proximately
 14 inculcate poor dietary habits in California children, placing them at a lifelong risk of
 15 developing a myriad of health problems.

16 53. This in turn contributes to the rising cost of health care in this country.

17 54. This marketing also interferes with and undermines parental control over
 18 the health and welfare of their children. This action seeks to stop one of the most
 19 powerful, unfair, and deceptive practices – tempting kids with toys to get them to nag
 20 their parents to buy Happy Meals, thereby restoring an environment in which children
 21 and their parents can make dietary choices free from unfair and deceptive child-
 22 targeted marketing.

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 24
 25 ²² J. Schor, BORN TO BUY at 161-162 (Scribner 2004).

26 ²³ J. Schor, BORN TO BUY at 184 (Scribner 2004).

27 ²⁴ Bergold, Jr., Roy T. "The Obesity Debate." QSR Magazine 2 November 2010: n.
 28 pag. Web. 2 November 2010, available at www.qsrmagazine.com/articles/columnist/roy_bergold/1110/obesity-1.phtml.

55. Fast-food companies – with McDonald’s by far in the lead – spent over \$520 million on marketing and sales promotions, including toys, to advertise children’s meals.²⁵ Toy premiums made up almost three-quarters of those expenses, totaling over \$350 million. According to data from the NPD Group, fast food restaurants sold more than 1.2 billion children’s meals with toys to children ages 12 and under, accounting for 20% of all child traffic at those restaurants.²⁶ On information and belief, McDonald’s spends far more and distributes far more toys (along with poor-nutrition meals) than any other fast food restaurant.

56. McDonald’s intent is clear, but internal documents make the intent even clearer.

57. One internal McDonald’s document brags that “The ultimate goal is to make McDonald’s the overwhelming favorite restaurant to visit for adults, *just as it already is for kids.*”²⁷

58. Another internal document is more specific: “McDonald’s has strong appeal among children *because of Happy Meals including fun toys, games, and prizes.* McDonald’s also attracts children with the . . . food (especially hamburgers, cheeseburgers, and French fries) and the advertising. . . . *[C]hildren are more attracted to McDonald’s because of the Happy Meal promotion . . .*”²⁸

59. By advertising Happy Meals with toys as bait, McDonald’s unfairly and deceptively markets directly to children. When McDonald’s bombards children with advertisements or other marketing for Happy Meals with toys, many children will pester their parents repeatedly to take them to McDonald’s, just so they can get the

²⁵ Federal Trade Commission, *Marketing Food to Children and Adolescents* at ES-3 (2008), available at www.ftc.gov/os/2008/07P064504foodmktingreport.pdf. The 2006 data in this FTC report are the most recent available publicly.

²⁶ *Ibid.*

²⁷ Source: McDonald’s Management News, published for McDonald’s owners/operators and store management.

²⁸ Source: McDonald’s Fast Track Report [emphasis added].

1 current toy (usually a new one each week). Once there, the children are likely to receive
 2 a meal that is too high in calories, saturated fat, added sugars, and sodium, and devoid
 3 of whole grains. Developing a lifelong habit of eating unhealthy meals is likely to
 4 promote obesity, high blood pressure, heart disease, diabetes, and other life-threatening
 5 or debilitating diet-related diseases.²⁹ These consequences are all caused by kids being
 6 baited by a cheap toy.

7 60. Children in California spend as much time using screen media (television,
 8 videos, video games, and computers) as they spend playing outside.³⁰ Children under
 9 the age of six watch over an hour of television per day, and the amount of television
 10 watched increases with age.³¹ Annually, children in California view tens of thousands of
 11 television commercials, with at least 30,000 commercials representing a common
 12 ceiling.³² Approximately half of the commercials during children's programming (as
 13 classified by the Federal Communications Commissions) are for poor-nutrition food.³³
 14 Children in California, therefore, see approximately 15,000 television commercials for
 15 poor-nutrition food each year. (Of course, they see a multitude of other food
 16 advertisements on the Internet, in restaurant windows, and elsewhere).
 17

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 19 ²⁹ This complaint is limited to toys and other premiums sold with Happy Meals,
 20 although we note that items for which consumers pay extra, like the since-recalled
 21 Shrek glasses, and the Mighty Meals aimed at older kids also contribute to the problem.

22 ³⁰ Kaiser Family Foundation, *Zero to Six: Electronic Media in the Lives of Infants,*
 23 *Toddlers and Preschoolers* (2003), available at
 24 [http://www.kff.org/entmedia/upload/Zero-to-Six-Electronic-Media-in-the-Lives-of-](http://www.kff.org/entmedia/upload/Zero-to-Six-Electronic-Media-in-the-Lives-of-Infants-Toddlers-and-Preschoolers-PDF.pdf)
 25 [Infants-Toddlers-and-Preschoolers-PDF.pdf](http://www.kff.org/entmedia/upload/Zero-to-Six-Electronic-Media-in-the-Lives-of-Infants-Toddlers-and-Preschoolers-PDF.pdf).

26 ³¹ Kaiser Family Foundation, *Zero to Six: Electronic Media in the Lives of Infants,*
 27 *Toddlers, and Preschoolers* (21003), available at
 28 [http://www.kff.org/entmedia/upload/Zero-to-Six-Electronic-Media-in-the-Lives-of-](http://www.kff.org/entmedia/upload/Zero-to-Six-Electronic-Media-in-the-Lives-of-Infants-Toddlers-and-Preschoolers-PDF.pdf)
[Infants-Toddlers-and-Preschoolers-PDF.pdf](http://www.kff.org/entmedia/upload/Zero-to-Six-Electronic-Media-in-the-Lives-of-Infants-Toddlers-and-Preschoolers-PDF.pdf).

³² Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content, Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at 6 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage) (forthcoming).

³³ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY? 4-42 (National Academies Press 2006).

61. Nearly all food advertisements viewed by children and adolescents are for products high in fat, sugar, or sodium,³⁴ and there is increasing evidence that the marketing of unhealthy food products is disproportionately targeted at ethnic minority children.³⁵

62. California children are deceived by marketing.

63. Almost no child under the age of six understands marketing; they lack the cognitive maturity to perceive its persuasive intent. For example, children under the age of six believe television commercials are television programs. These effects persist, in somewhat diminished degree but still at a significant level, until the children are older than eight.

64. Even the few children who may begin to understand persuasive intent of commercials are not fully able to understand that marketing by self-interested corporations influences their desires.

65. "Comprehension of an advertiser's motives or intentions in conveying commercial messages poses a mental challenge that children below roughly 8 years of age are poorly equipped to handle. A younger child is more likely to focus on the product featured in an advertisement, as opposed to thinking about the company that produced it, or the abstract concept of their economic interests."³⁶

66. Thus, because these children do not understand marketing, they are inherently deceived by the marketing, just as adults are deceived by deliberately misleading marketing.

³⁴ Children: 98%; adolescents: 89%.

³⁵ Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content, Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at 11-12 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage) (forthcoming).

³⁶ Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content, Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at 22 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage) (forthcoming).

67. Marketing poor-nutrition Happy Meals to California children leads them to prefer, purchase, and pester their parents to buy poor-nutrition Happy Meals.

68. Children influence their families' expenditures each year.³⁷ Children as a consumer group, including those eight and younger, spend approximately \$200 billion each year themselves.³⁸ One-third of what they spend is on food and beverages.³⁹

69. After being constantly bombarded with advertising for Happy Meals that often feature toys, California children then bombard their parents with requests for the toys and Happy Meals they have seen advertised. These requests sometimes lead parents to purchase poor-nutrition Happy Meal items they would otherwise not buy. Maya has requested Happy Meals from Parham because of McDonald's marketing practices, and sometimes Parham, not wishing to cause family rancor, purchases such meals.

70. McDonald's is well aware of the impact of "pester power" on parents' purchasing decisions and uses it to its advantage by advertising Happy Meals with toys.

71. For example, McDonald's founder Ray Kroc said that "if you had \$1 to spend on marketing, *spend it on kids, because they bring mom and dad.*"⁴⁰

72. The toy has been the key to successful marketing to children of Happy Meals. Joe Johnston, who was on the advertising-agency team in the early 1970s that invented McDonald's Fun Meal, which later became the Happy Meal once a toy was

³⁷ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY? 1-4 (National Academies Press 2006).

³⁸ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY? 1-4 (National Academies Press 2006).

³⁹ J.U. McNeal *Tapping the Three Kids' Markets*, AMERICAN DEMOGRAPHICS (April 1998), at 36, accessed on LexisNexis, February 9, 2006.

⁴⁰ Roy T. Bergold, Jr., "Is Obesity Really Our Fault?" QSR Magazine (June 2010), accessible at www.qsrmagazine.com/articles/columnists/roy_bergold/0610/obesity-1.phtml. Mr. Bergold was McDonald's advertising head for 29 years.

1 added, acknowledged that "Yes, even then, we knew that *we needed a toy to make it*
2 *work*".

3 73. A consultant for McDonald's brags, "McDonald's knows that by targeting
4 families, it hits one of the most attractive, loyal consumer groups available. It gets into
5 *the parents' wallets via the kids' minds*". Given the strength of this strategy, it's no
6 wonder that McDonald's has become what it is.⁴¹

7 74. McDonald's has a long history of targeting children and families.
8 McDonald's Founder Kroc boasted, "we used to spot good locations for McDonald's
9 stores by flying over a community and looking for schools and church steeples."⁴²

10 75. The deceptive nature of McDonald's Happy Meals marketing is not
11 debatable. Even industry insiders recognize it.

12 76. The long-time head of McDonald's advertising recently commented that
13 "Research says that *seven-year-olds and younger accept what we say in advertising as*
14 *the truth*. Heck, three-year-olds can identify brands using just their corporate logos.
15 According to a survey commissioned by the Center for a New American Dream back in
16 2002, the average kid asks his parent for something nine times before the parent gives
17 in....*What's a mother to do under this assault?*"⁴³

18 77. "In an ideal world, perhaps parents would ignore all of children's
19 requests for lavish toys and unhealthy snack foods, but, in fact, research is clear that
20 parents have a high rate of yielding to children's purchase-influence requests.
21 Moreover, most children begin to receive their own spending money as young as eight
22

23
24 ⁴¹ Martin Lindstrom, "Branding: Its [sic] All About Focus," available at
25 www.martinlindstrom.com/index.php/cmsid__list_articles/__1159. Mr. Lindstrom
26 advises McDonald's on all aspects of brand building including sensory branding,
27 neuromarketing and optimization.
28 http://www.martinlindstrom.com/index.php/cmsid__consulting.

⁴² Kroc, Ray, *Grinding It Out: The Making of McDonald's*, p.176 (Contemporary Books, Inc. 1976).

⁴³ Roy T. Bergold, Jr., *supra*.

1 years of age, and one of the earliest products they are allowed to buy without explicit
2 parental consent is snack foods."⁴⁴

3 78. After the Center for Science in the Public Interest (CSPI), lead counsel in
4 this action, sent notice of intent to sue to McDonald's (in an unsuccessful effort to
5 resolve this problem without litigation), a marketing-industry insider noted that "CSPI
6 claims McD's violates several state consumer laws because advertising to kids is
7 'inherently deceptive, because young kids are not developmentally advanced enough to
8 understand the persuasive intent of marketing.' *This, as a fact, is true.*"⁴⁵

9 79. Parents in California have almost no ability or opportunity to control
10 where and how their children view marketing. Marketing aimed at California children
11 is everywhere: on television, in magazines, on Web sites, on billboards, on school buses,
12 in restaurants, and in school cafeterias and on school vending machines.

13 80. On information and belief, McDonald's is aware of the inability of
14 California children to understand the persuasive intent of marketing and its impact on
15 their decision-making. Yet, in California, McDonald's knowingly takes advantage of the
16 cognitive immaturity of children and advertises poor-nutrition Happy Meals to them,
17 often advertising "free" toys to make its marketing efforts particularly persuasive.

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23 ⁴⁴ Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content,*
24 *Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at
25 33 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage) (forthcoming).

26 ⁴⁵ Jim Edwards, "How McDonald's Happy Meal Will Survive This Perfect Storm of
27 Child Abuse Accusations and Litigation." CBS Interactive (July 8, 2010), available at
28 <http://www.bnet.com/blog/advertising-business/how-mcdonald-8217s-happy-meal-will-survive-this-perfect-storm-of-child-abuse-accusations-and-litigaton/5156>
[emphasis added]. Mr. Edwards is former managing editor of *Adweek* and has covered
drug marketing at *Brandweek*.

1 **IV. McDonald's Advertising Directly, Proximately, and Cognizably Harms**
 2 **California Children and Their Parents**

3 81. California parents' lack of control over the marketing of Happy Meals to
 4 their children strains their ability to raise healthy children and to instill healthy eating
 5 habits in them.⁴⁶

6 82. McDonald's deceptively markets Happy Meals to Maya and members of
 7 the Children Class, continuing its decades-old practice of advertising Happy Meals with
 8 toys to market directly to children in order to bypass the parents and increase sales.

9 83. After years of criticism of its marketing practices, McDonald's pledged to
 10 the Better Business Bureau that it would advertise only Happy Meals that meet
 11 McDonald's own nutrition standards for children (although those standards are weaker
 12 than appropriate). However, that pledge fails to address McDonald's insidious use of
 13 toys in advertising its products to children. Regardless of the Happy Meal combinations
 14 shown in advertising, almost all Happy Meal combinations are nutritionally
 15 inappropriate for very young children. Moreover, the default⁴⁷ choice for the side dish
 16 tends to be the nutritionally poor French fries, not the less-harmful (but still not
 17 healthy) Apple Dippers with sugary Caramel Dipping Sauce.⁴⁸

18 84. A reasonable lunch for a young child should contain no more than 430
 19 calories (one-third of the 1,300 calories that is recommended daily intake for sedentary
 20 children 4 to 8 years old)
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25 ⁴⁶ JULIET B. SCHOR, BORN TO BUY 130-32, 160-65 (Scribner 2004).

26 ⁴⁷ A "default" item is one that the McDonald's employee includes in a Happy Meal
 27 without asking.

28 ⁴⁸ Apple Dippers consist of apple slices and a sugary caramel dipping sauce,
 effectively the kind of caramel apple one might buy at a carnival.

1 85. The pre-suit notice delivered to McDonald's on June 22, 2010, described
2 the problems set out in detail herein, describing the number of unhealthy meals thus:

3 McDonald's Web site lists 24 Happy Meal combinations. Considering that a
4 reasonable lunch for a young child would contain no more than 430 calories (one
5 third of the 1,300 calories that is the recommended daily intake for children 4 to 8
6 years old), not a single Happy Meal meets that target. The average of all 24 meals
7 is 26 percent higher in calories than a reasonable lunch. In fact, one meal
8 (cheeseburger, French fries, and chocolate milk) hits 700 calories — a whopping
9 63 percent higher (and more than half the calories for the entire day).

10 86. The source for these numbers was McDonald's own published Happy
11 Meals nutrition information available on its website, and dated June 2, 2010.

12 87. Three days after it received the pre-suit notice, McDonald's altered this
13 data, reducing the amount of calories and sugar.⁴⁹

14 88. After McDonald's altered its own data, three of the 24 meals suddenly met
15 the calorie target described in the pre-suit notice.

16 89. Plaintiff has no idea why McDonald's would suddenly alter its own data
17 in a manner that made these three meals appear healthier (but still not healthy — all 24
18 meals exceed 400 mg of sodium, one-third of the 1,200-milligram recommendation for
19 sodium for children).

20 90. In a CSPI study of 44 McDonald's outlets, the default Happy Meal almost
21 always included French fries. In response to a request for a hamburger Happy meal, the
22 McDonald's employee, without asking customers which side dish they wanted,
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28 ⁴⁹ Nutrition.mcdonalds.com/nutrionexchange/Happy_Meals_Nutrition_List.pdf
(last accessed December 14, 2010).

1 provided fries 93 percent of the time.⁵⁰ (Beverage choices were usually offered, but a
2 soft drink was the first option offered 78 percent of the time.)

3 91. Thus, McDonald's claims it is serving up healthier options, but in fact it is
4 not, for several reasons:

- 5 • The best-possible combination is still fried chicken and a caramel apple.⁵¹
- 6 • Although McDonald's briefly depicts the best-possible combinations in its
7 advertising, those depictions are fleeting. It engages in bait-and-switch
8 93% of the time, substituting the far-more-unhealthy French fries for
9 Apple Dippers. Indeed, many of McDonald's commercials aimed at very
10 young children are intended to spur visits to McDonald's stores rather
11 than to promote a particular food item...but, of course, the toys are
12 heavily featured.
- 13 • On information and belief, the cost of McDonald's to produce an order of
14 French fries is significantly less than the cost to produce the apples and
15 dipping sauce for the Apple Dippers. Thus, McDonald's Bait-and-switch
16 practice is likely based largely on financial motives.

17 92. McDonald's duplicitous approach to marketing directed to children can
18 be seen in a recent press release that boasts that the Company's Shrek-based promotion
19 will "encourage kids to 'Shrek Out' their Happy Meals around the world with menu
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25 ⁵⁰ Twenty-seven health and nutrition professionals visited 44 restaurants in 14
26 states. They purchased 41 Happy Meals inside of restaurants and 34 through drive-
throughs, for a total of 75 assessments.

27 ⁵¹ This meal consists of four fried Chicken McNuggets and less than half of one
28 small apple accompanied by caramel sauce, with less calories, saturated fat, and sodium
than the other choices.

options like fruits, vegetables, low-fat dairy and fruit juices."⁵² In reality, though, the whole point of the Shrek promotion is to get kids into McDonald's where they most likely will end up being served unhealthy default options and eating unhealthy meals.

93. Consider the Happy Meal composed of a cheeseburger, French fries, and chocolate milk. That meal has 700 calories (more than half a day's worth for sedentary young children), 9 grams of saturated fat (more than half the 14 gram recommended limit), 1,080 milligrams of sodium (more than three-fourths of the 1,200 milligram limit), and about twice the 16-gram recommended daily limit for added sugars. Furthermore, the bun is made with white flour, not the whole-wheat flour that is recommended for at least half a consumer's grain intake.

94. Maya, age six, continually clamors to be taken to McDonald's "for the toys."

95. Maya and other members of the Children Class have been deceived by McDonald's marketing practices.

96. Maya does not understand that McDonald's marketing efforts are intended to make her want to eat Happy Meals. Maya interprets this marketing as good advice for proper eating.

97. Often, Maya wants Happy Meals because toys based on trusted characters from television and movies (such as Shrek) endorse the Happy Meals in McDonald's advertising.

⁵² www.aboutmcdonalds.com/mcd/media_center/recent_news/corporate/Press_Release_McDonalds_Launches_Shrek_Themed_Happy_Meal_to_Motivate_Kids_to_Eat_More_Fruits_Vegetables_and_Dairy.html

1 98. A few of the many toys that have induced Maya to clamor for Happy
2 Meals and to pester Parham to purchase Happy Meals for the sake of obtaining a toy
3 are:

- 4 • I-Carly lip gloss and note pad
- 5 • Barbie lip gloss and small comb
- 6 • Shrek movie character figures
- 7 • Strawberry Shortcake mini-dolls with paper and mini-stamps
- 8 • “American Idol” toy

9 99. McDonald’s marketing practices are unfair and deceptive to Maya and
10 other members of the Children Class.

11 100. McDonald’s has unfairly influenced Maya. Its Happy Meals advertising
12 aimed at Maya has influenced her to desire and to eat the poor-nutrition Happy Meals,
13 thereby harming Maya’s health without her knowledge or comprehension.
14

15 101. When given the choice, Maya wants to eat Happy Meals instead of fruits,
16 vegetables, and whole grains because McDonald’s has convinced her that she needs to
17 get the toy.
18

19 102. McDonald’s marketing practices are unfair to Parham and members of the
20 Parents Class.

21 103. One instance that is particularly frustrating to Parham, because it is
22 outside of her control, is that Maya’s friends are McDonald’s viral marketers.
23

24 104. Maya learns of Happy Meal toys from other children in her playgroup,
25 despite Parham’s efforts to restrict Maya’s exposure to McDonald’s advertising and
26 access to Happy Meal toys. This is McDonald’s advertising directive – to subvert
27 parental authority and mobilize pester power in order to sell unhealthful meals to kids
28 using the lure of a toy.

CLASS ACTION COMPLAINT FOR VIOLATIONS OF
THE UNFAIR COMPETITION LAW, THE
CONSUMERS LEGAL REMEDIES ACT AND
DECLARATORY AND INJUNCTIVE RELIEF

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1 judicial officer presiding over this action and members of their families within the third
2 degree of relationship.

3 112. Each class consists of at least 100,000 members. Thus, each class is too
4 numerous to make it practicable to join all members as plaintiffs.

5 113. For each class, there are questions of law and fact that predominate over
6 any questions affecting only individual class members. These issues include:

- 7 a. Whether McDonald's has engaged in unfair practices;
- 8 b. Whether McDonald's has engaged in deceptive practices;
- 9 c. The extent to which members of the Parents Class have been
10 injured as a result of these practices;
- 11 d. The extent to which members of the Children Class have suffered
12 injury as a result of these practices;
- 13 e. Whether these practices render McDonald's in violation of
14 California's Unfair Competition Law, California Business and Professions Code § 17200
15 and § 17500 *et seq.*; and California's CLRA § 1750 *et seq.*

16 114. Maya's claims are typical of claims of the Children Class she seeks to
17 represent.

18 115. Parham's claims are typical of the claims of the Parents Class she seeks to
19 represent.

20 116. Maya and Parham will fairly and adequately protect the interest of their
21 respective classes. They intend to prosecute these claims vigorously and seek to obtain
22 relief that would benefit the entirety of each class. They have no conflicts with their
23 respective classes.

24 117. Counsel for Maya and Parham are qualified to litigate the claims of each
25 class.

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1 118. Common issues of law and fact predominate over issues affecting only
2 individuals.

3 119. A class action is superior to other available methods to resolve the
4 controversies arising from McDonald's practices. Many of the members of each class
5 (especially the children) are likely unaware of their legal rights. In the absence of class
6 actions, many members of each class would not have their claims redressed.
7

8 **CLAIMS FOR RELIEF**

9 **COUNT I**

10 **ENGAGING IN DECEPTIVE MARKETING AND BUSINESS PRACTICES**

11 **(Maya individually and as class representative)**

12 120. It is unlawful to engage in deceptive acts or practices while engaged in
13 any trade or commerce in California. California Business and Professions Code § 17200
14 *et seq.*

15 121. McDonald's violates the California Unfair Competition Law each time it
16 markets Happy Meals to California children.
17

18 **COUNT II**

19 **ENGAGING IN UNFAIR MARKETING AND BUSINESS PRACTICES**

20 **(Maya and Parham individually and as class representatives)**

21 122. It is unlawful to engage in unfair acts or practices while engaged in any
22 trade or commerce in California. California Business and Professions Code § 17200 *et*
23 *seq.*

24 123. McDonald's violates the California Unfair Competition Law each time it
25 markets Happy Meals to California children.
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**CLASS ACTION COMPLAINT FOR VIOLATIONS OF
THE UNFAIR COMPETITION LAW, THE
CONSUMERS LEGAL REMEDIES ACT AND
DECLARATORY AND INJUNCTIVE RELIEF**

COUNT III

ENGAGING IN UNFAIR METHODS OF COMPETITION AND UNFAIR OR
DECEPTIVE ACTS OR PRACTICES

(Maya and Parham individually and as class representatives)

124. "Unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful." Consumer Legal Remedies Act California Civil Code § 1750, *et seq.* ("CLRA").

125. The Happy Meals at issue are "goods" as defined by CLRA § 1761(a).

126. Defendants are "persons" as defined by CLRA § 1761(c).

127. Plaintiffs and the Putative Class members are "consumers" as defined by CLRA § 1761(d).

128. The purchase of Happy Meals by the Plaintiffs and Putative Class members are "transactions" as defined by CLRA § 1761(e).

129. McDonald's advertising and selling Happy Meals with toys to very young children is prohibited pursuant to the CLRA because it is inherently deceptive and was "undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer."

130. McDonald's violates the CLRA by knowingly and intentionally advertising Happy Meals with toys to very young children.

131. This unfair and deceptive practice violates CLRA § 1770(a)(5), which prohibits "Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have . . ."

132. This unfair and deceptive practice is also a violation of CLRA § 1770(a)(7) which prohibits "Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another."

133. McDonald's unfair and deceptive acts and practices have violated, and continue to violate the CLRA, because they extend to transactions that are intended to result, or have resulted, in the sale or lease of goods or services to consumers, including the Plaintiffs and the Putative Class members.

134. As a direct and proximate result of McDonald's unfair and deceptive acts and practices, the Plaintiffs and the Putative Class members have suffered damage in that they purchased deceptively advertised and unhealthy Happy Meals.

135. Plaintiffs would not have bought Happy Meals but for McDonald's deceptive marketing to very young children with a toy.

COUNT IV

ENGAGING IN UNLAWFUL METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES

(Maya and Parham individually and as class representatives)

136. McDonald's acts and practices constitute unlawful business acts and practices.

137. McDonald's marketing with toys and other inducements is inherently deceptive to very young children.

138. McDonald's business practices alleged above are unlawful under the CLRA, which forbids deceptive advertising, among other things. By violating the CLRA, McDonald's has committed unlawful acts and have violated California Business and Professions Code § 17200 *et seq.*

RELIEF REQUESTED

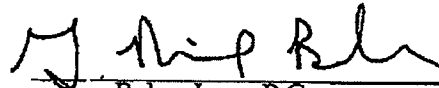
Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that the Court:

1. Certify the claims to be asserted as a class action.
2. Declare that McDonald's advertising acts and practices violate the California Unfair Competition Law and the California Consumer Legal Remedies Act.
3. Enjoin McDonald's from continuing to advertise Happy Meals to California children featuring toys.
4. Award costs and attorney's fees, in an amount to be determined at trial.
5. Order McDonald's to pay reasonable costs, attorneys' fees, and expert fees.
6. Grant all other relief that the Court deems just and proper.

JURY REQUEST

PLAINTIFFS REQUEST A TRIAL BY JURY AS TO ALL ISSUES SO TRIABLE.

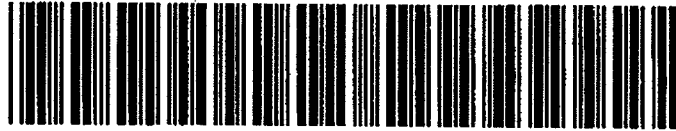
Dated December 15, 2010



Baker Law, P.C.
2229 1st Avenue North
Birmingham, AL 35203
G. Richard Baker, Esquire

Center for Science in the
Public Interest
5646 Milton Street, Suite
211
Dallas, TX 75206
Stephen Gardner, Esquire
Seema Rattan, Esquire

CLASS ACTION COMPLAINT FOR VIOLATIONS OF
THE UNFAIR COMPETITION LAW, THE
CONSUMERS LEGAL REMEDIES ACT AND
DECLARATORY AND INJUNCTIVE RELIEF



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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COMPLAINT

IET PARHAM, ON BEHALF OF HERSELF AND THOSE et al VS. MCDONALD'S CORPORA

001C03081814

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George Richard Baker, Esquire (SBN 224003)
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FILED
Superior Court of California
County of San Francisco

JAN 05 2011

Stephen Gardner, Esquire (*pro hac vice* to be sought)
Seema Rattan, Esquire (*pro hac vice* to be sought)
Center for Science in the Public Interest
5646 Milton Street, Suite 211
Dallas, TX 75206
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214.827.2787 (facsimile)

CLERK OF THE COURT
By: Terence D. Dauterive
Deputy Clerk

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR SAN FRANCISCO COUNTY

MONET PARHAM, on behalf of herself
and those similarly situated,

Plaintiff,

vs.

McDONALD'S CORPORATION and
McDONALD'S USA, LLC,

Defendants.

CASE NO.: CGC-10-506178

AMENDED CLASS ACTION
COMPLAINT FOR VIOLATIONS OF
THE UNFAIR COMPETITION LAW,
THE CONSUMERS LEGAL REMEDIES
ACT AND DECLARATORY AND
INJUNCTIVE RELIEF

Plaintiff Requests Jury Trial on all Issues
Triable by a Jury

BY FAX

INTRODUCTION

1. Plaintiff, by and through undersigned counsel, bring this class action on her own behalf and on behalf of the class comprised of all other individuals similarly situated within the State of California, pursuant to California's Unfair Competition Law, Business and Professions Code §§ 17200 *et seq.* ("UCL"), and California's False Advertising Law, Business and Professions Code § 17500, *et seq.* ("FAL"), and The Consumers Legal Remedies Act Civil Code § 1750, *et seq.* ("CLRA") against McDonald's. Plaintiff asserts that Defendants engage in the unfair, unlawful, deceptive

1 and fraudulent practice of promoting and advertising McDonald's Happy Meal
2 products to very young California children, using the inducement of various toys.

3 2. McDonald's exploits very young California children and harms their
4 health by advertising unhealthy Happy Meals with toys directly to them. Children eight
5 years old and younger do not have the cognitive skills and the developmental maturity
6 to understand the persuasive intent of marketing and advertising.

7 3. Thus, McDonald's advertising featuring toys to bait children violates
8 California law because it is inherently deceptive and unfair.

9 4. McDonald's advertising is also unfair to its competitors, who do not
10 choose to attract very young children with the lure of a toy.

11 5. According to the Institute of Medicine, "Before a certain age, children lack
12 the defenses, or skills, to discriminate commercial from noncommercial content, or to
13 attribute persuasive intent to advertising. Children generally develop these skills at
14 about age 8 years, but children as old as 11 may not activate their defenses unless
15 explicitly cued to do so."¹

16 6. The United States Supreme Court noted this year that children "have lack
17 of maturity and an underdeveloped sense of responsibility; they are *more vulnerable or*
18 *susceptible to negative influences and outside pressures*, including peer pressure; and
19 their characters are not as well formed."²

20 7. Federal law has a long history of recognizing that advertising that is not
21 understood to be advertising is misleading to consumers, and intervening to prevent
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25 ¹ INSTITUTE OF MEDICINE, FOOD, MARKETING TO CHILDREN: THREAT OR
26 OPPORTUNITY? ES-4 (National Academics Press 2006).

27 ² *Graham v. Florida*, 130 S.Ct. 2011, 2026-2027 (2010) (emphasis added; internal
28 quotations and citations omitted). The Court was speaking of teenagers, but the
comments apply with even more force to younger children.

1 deception.³ "These laws all stem from the principle that the public is entitled to know
2 when and by whom it is being persuaded."⁴

3 8. Children under the age of eight do not understand advertising; they lack
4 the ability to perceive its persuasive intent. When exposed to advertising, children
5 under eight lack the skills to know when and by whom they are being persuaded.

6 9. Children nonetheless influence the purchasing decisions of their parents.
7 McDonald's exploits that influence, by bombarding children with advertisements for
8 Happy Meals with toys, knowing that it will result in kids nagging parents to purchase
9 nutritionally poor Happy Meals for their children.

10 10. Internal McDonald's documents prove its intent to subvert parental
11 authority. One internal document says that "[r]esearch shows when families with kids
12 visit McDonald's, the kids alone decide on McDonald's in 53% of the cases ...[o]n all,
13 they [children] influence 95% of family visits to McDonald's."⁵ McDonald's thus
14 affirmatively and knowingly targets the most vulnerable class of consumers, very
15 young children, in order to insidiously and deceptively access parents' wallets.

16 11. The Federal Trade Commission reported to the President that
17 "[m]arketing directly to children essentially is an end-run" around the parents' role,
18 and should be stopped.⁶

19
20 ³ See e.g. 47 U.S.C. § 317.

21 ⁴ Richard Kielbowicz and Linda Lawson, *Unmasking Hidden Commercials in*
22 *Broadcasting: Origins of the Sponsorship Identification Regulations, 1927-1963*, 56 Federal
Communications Law Journal 327, 330 (2004).

23 ⁵ Source: *McDonald's OPNAD Newsletter*, a "publication for McDonald's
24 owner/operators.

25 ⁶ Federal Trade Commission, "Marketing Violent Entertainment to Children: A
26 Review of Self-Regulation and Industry Practices in the Motion Picture, Music
27 Recording & Electronic Game Industries" at 54 (2000). Although this comment was in
28 the context of a different form of different form of harmful marketing practices, the
finding applies equally here. The report is available at www.ftc.gov/reports/violence/vioreport.pdf.

12. The White House Task Force on Childhood Obesity has stated that restaurants "have an important role to play in creating a food marketing environment that supports, rather than undermines, the efforts of parents and other caregivers to encourage healthy eating among children and prevent obesity."⁷

13. Experts, including the American Psychological Association, agree with the FTC's and the White House Task Force's position.

14. By advertising that Happy Meals include toys, McDonald's has helped create, and continues to exacerbate, a super-sized health crisis in California. Increasing numbers of children are making poor nutritional choices, developing unhealthy eating habits that will follow them into adulthood, and becoming obese.

15. Most Happy Meals are too high in calories, saturated fat, and sodium to be healthful for very young children. Most Happy Meals lack healthful servings of fruits and vegetables and have little dietary fiber and whole grains. According to the Institute of Medicine, "Diets that are high in calories and other constituents such as saturated fats and low in certain nutrients are putting our children and youth at risk for diseases later in life, such as heart disease, stroke, circulatory problems, some cancers, diabetes, and osteoporosis."⁸

16. Advertising poor-nutrition Happy Meals with toys to children is a contributing factor in this crisis.

17. These marketing practices are unfair to parents as well as their children because they interfere with the parents' ability to instill good eating habits in their children and because they cause conflict between parents and their children.

⁷ White House Task Force on Childhood Obesity (2010). "Solving the problem of childhood obesity within a generation." Available at www.letsmove.gov/tfco_fullreport_may2010.pdf.

⁸ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY? E-1 (National Academies Press 2006).

1 18. McDonald's is engaged in a highly sophisticated scheme to use the bait of
 2 toys to exploit children's developmental immaturity and subvert parental authority.
 3 That scheme is designed to sell and get children to eat nutritionally unbalanced Happy
 4 Meals, which in turn promote obesity and other diet-related diseases.

5 19. Just this month, two prestigious publications, The New York Times and
 6 Psychology Today, criticized McDonald's practice of including toys in nutritionally
 7 poor meals in order to sell their product.⁹

8 20. McDonald's advertising of Happy Meals with toys is deceptive and unfair
 9 to children, unfair to parents, and in violation of California law. For these reasons,
 10 Plaintiff seeks the relief set forth herein.

11 JURISDICTION AND VENUE

12 21. This Court has jurisdiction over Plaintiff's claims.

13 22. The claims made by the Plaintiff on behalf of herself and other members of
 14 the Class she purports to represent are brought pursuant to the UCL, the FAL and the
 15 CLRA for injunctive relief but not for restitution, penalties, or damages. Thus, the value
 16 of the claims to Plaintiff and to the class, and thus the amount in controversy, is far
 17 below \$75,000. No matter how evaluated, the amount in controversy falls far short of
 18 \$5,000,000.00. Accordingly, Plaintiff could not elect to bring this case in federal court
 19 because there is an insufficient amount in controversy to evoke federal jurisdiction.

20 23. The jurisdiction and venue of this action in the Superior Court in and for
 21 the County of San Francisco is based upon California Code of Civil Procedure § 410.10.

22 24. Venue is appropriate in the County of San Francisco pursuant to
 23 California Code of Civil Procedure § 395. Venue in this Court is proper in that
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 25
 26

27 ⁹ See Editorial, *Not So Happy Meals*, N.Y. Times, December 20, 2010, § A at 28.
 28 Available at <http://www.nytimes.com/2010/12/20/opinion/20mon4.html> and *The End of the Happy Meal?* Available at <http://www.psychologytoday.com/blog/its-not-just-baby-fat/201012/the-end-the-happy-meal>.

1 McDonald's transacted business in California and the conduct complained of occurred
2 in California.

3 25. Plaintiff files her affidavit showing these facts concurrently with the
4 Complaint as required by CC § 1780(d).

5 CONDITIONS PRECEDENT

6 26. All conditions precedent have been performed or have occurred.

7 PARTIES

8 27. Monet Parham ("Parham") is a parent residing in Sacramento, California,
9 with children ages two and six. Parham brings this action on her own behalf.

10 28. Plaintiff has standing to bring this case on her own behalf because she has
11 lost money or property because of Defendants' activities, and therefore has suffered an
12 "injury in fact." Plaintiff is also a "consumer" and "real party in interest" as defined by
13 the CLRA.

14 29. Defendants McDonald's Corporation and McDonald's USA, LLC
15 (collectively "McDonald's"), incorporated in Delaware and Illinois, respectively, own
16 and operate the largest and most successful fast food chain in history.

17 FACTS

18 I. Definitions

19 30. The term "advertising" includes all forms of marketing in all forms of
20 media and venues, including without limitation: print advertisements, television and
21 radio commercials, product labels, magazines, use of licensed characters, use of
22 celebrities, viral marketing, web sites, signage at restaurants, toys, advergames,
23 sponsorships, school-based marketing (such as book covers and sponsored educational
24 material), and kids clubs.

25 31. "Class Period" is the period from December 15, 2006 for Counts I and III;
26 December 15, 2007 for Count II and to the date of class certification, or as otherwise
27 determined by the Court.
28

32. "Happy Meals" are the meals that McDonald's produces for, and markets directly to, very young children and that are accompanied by a free toy.

33. Unless otherwise stated, all references to "children" in this complaint means California-resident children eight years or younger.

II. Background: A Children's Health Crisis of Epidemic Proportions

34. Increasing numbers of children in California are unhealthy. Many children are becoming overweight or obese and are suffering from diet-related health problems, like diabetes.¹⁰ High-sodium diets boost blood pressure, even in very young children, and saturated fat and cholesterol start clogging arteries in children and youths.

35. Diet-related health problems persist into adulthood. The eating habits and attitudes about nutrition that children adopt often extend into adulthood.¹¹

36. Currently, 73% of adults are overweight, obese, or extremely obese.¹² A growing number of children are overweight, obese, or suffer from diet-related health problems, which is an indication that the number of adults with these problems will likely grow. This will further burden California's health-care system, which is already overwhelmed.¹³

37. In California, an increased number of children have poor diets, due in significant part to poor-nutrition foods such as Happy Meals. Happy Meals and other poor-nutrition foods often replace healthier foods and beverages in children's diets and accustom children to seeking and eating poor-nutrition foods even outside the fast-

¹⁰ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY? 2-4 (National Academies Press 2006).

¹¹ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY? E-1 (National Academies Press 2006).

¹² Results from the 2005-2006 National Health and Nutrition Examination Survey (NHANES) available at www.cdc.gov/nchs/data/hestat/overweight/overweight_adult.htm.

¹³ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY? 5-28 (National Academies Press 2006).

1 food-restaurant venue. For example, only 2% of children eat a healthy diet consistent
 2 with the main dietary recommendations of the U.S. Department of Agriculture.¹⁴ Only
 3 6% of children meet the USDA recommended limit of saturated fat intake; only 30% of
 4 children consume the USDA-recommended number of servings of milk each day; and
 5 only 15% eat the daily recommendation of fruit.¹⁵

6 38. The great majority of Happy Meals sold in California harm children's
 7 diets, and do not provide the nutrients required for healthy growth and development.
 8 Consumption of poor-nutrition food such as the contents of Happy Meals contributes to
 9 the development of obesity, high blood pressure, diabetes, and obesity-related illnesses
 10 in children. Even if children consume healthy foods at other times, consumption of
 11 Happy Meals is harmful.

12 **III. Advertising Happy Meals with Toys to Children is Unfair & Deceptive**

13 **A. Targeting Children**

14 39. McDonald's practice of marketing poor-nutrition Happy Meals to children
 15 in California is pervasive, with over 1300 McDonald's restaurants in California alone.

16 40. McDonald's markets poor-nutrition Happy Meals to California children
 17 through television advertisements, store signage, billboards, Web sites, branded
 18 merchandise, product packaging, magazines, and in schools and other venues.

19 41. Companies – with McDonald's leading the pack – employ a myriad of
 20 methods to determine what children prefer, how to make children like their products,
 21 and how to formulate their products, so they appeal almost irresistibly to children.
 22 These methods include: conducting consumer studies, observing children playing and
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 25
 26 ¹⁴ K. Munoz, S. Krebs-Smith, R. Ballard-Barbash and L. Cleveland, *Food Intakes of*
 27 *U.S. Children and Adolescents Compared with Recommendations*, 100 PEDIATRICS 323 (1997).

28 ¹⁵ U.S. Department of Agriculture, Office of Analysis, Nutrition and Evaluation.
 CHANGES IN CHILDREN'S DIETS: 1989-1991 to 1994-1996 (USDA 2001).

1 using various products in their homes and schools, and using children as informants on
2 what other children like and do not like.¹⁶

3 42. "Total U.S. expenditures on marketing to children are estimated at \$15-17
4 billion. It is hard to imagine (and certainly difficult to estimate) the total economic
5 stakes involved for businesses that depend upon child purchases and child influence on
6 parental spending."¹⁷

7 43. After studying the effect of marketing on children, the American
8 Psychological Association (APA) released a report on the issue. That report found,
9 "Because young children lack the cognitive skills and abilities of older children and
10 adults, they do not comprehend commercial messages in the same way as do more
11 mature audiences, and, hence, are uniquely susceptible to advertising influence. A
12 substantial body of research evidence documents age-related differences in how
13 children understand and are affected by television advertising. This evidence has
14 formed the basis for a wide range of policies in the United States designed to protect
15 children from advertising that would take unfair advantage of youngsters' limited
16 comprehension of the nature and purpose of commercial appeals. These policies form
17 the foundation of a broad societal consensus that children require special treatment and
18 protection from the unbridled efforts of the economic marketplace."¹⁸

19 44. The APA also noted, "An important side effect of the influence of
20 advertising on children's desire for products is the parent-child conflict that emerges
21 when refusals occur in response to children's purchase-influence attempts. Parents
22

23 ¹⁶ JULIET B. SCHOR, BORN TO BUY, 120-122 (Scribner 2004).

24 ¹⁷ Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content,*
25 *Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at
36-37 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage)
(forthcoming).

26 ¹⁸ American Psychological Association, REPORT OF THE APA TASK FORCE ON
27 ADVERTISING AND CHILDREN at 20 (2004), available at [www.apa.org/pi/families/](http://www.apa.org/pi/families/resources/advertising-children.pdf)
28 [resources/advertising-children.pdf](http://www.apa.org/pi/families/resources/advertising-children.pdf) (internal citations omitted).

1 obviously cannot honor all purchase requests triggered by television advertising, given
 2 the volume of commercials that the average child sees. In one study, more than half of
 3 children reported arguing or becoming angry when a toy request was denied; in
 4 another, the study observed high rates of child disappointment and anger in response
 5 to the majority of parent refusals for cereal requests at the supermarket. Other studies
 6 confirm these patterns. In sum, the frequent purchase requests associated with
 7 children's advertising exposure may place a strain on parent-child interaction.¹⁹

8 45. Professor Juliet Schor, a noted expert on consumerism, economics, and
 9 family studies, discusses the tension between the responsibilities of parents to make
 10 efforts to guide their children's eating practices and the efforts of marketers to
 11 undermine those very efforts. She notes that "a major thrust of contemporary marketing
 12 to children is the interposition of the marketer between the parent and child. Marketers
 13 create utopian spaces free of parents and employ insidious dual-messaging strategies.
 14 Ads position the marketer with the child against the parent".²⁰

15 46. Professor Schor continues by noting "the undeniable fact of parental
 16 responsibility does not imply that it's only parents who should be held responsible. The
 17 complexities of life today render that approach far too simple-minded."²¹

18 47. California children are deceived by marketing.

19 48. Almost no child under the age of six understands marketing; they lack the
 20 cognitive maturity to perceive its persuasive intent. For example, children under the age
 21 of six believe television commercials are television programs. These effects persist, in
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 25 ¹⁹ American Psychological Association, REPORT OF THE APA TASK FORCE ON
 26 ADVERTISING AND CHILDREN at 11 (2004), available at [www.apa.org/pi/families/
 resources/advertising-children.pdf](http://www.apa.org/pi/families/resources/advertising-children.pdf) (internal citations omitted).

27 ²⁰ J. Schor, BORN TO BUY at 161-162 (Scribner 2004).

28 ²¹ J. Schor, BORN TO BUY at 184 (Scribner 2004).

1 somewhat diminished degree but still at a significant level, until the children are older
2 than eight.

3 49. Even the few children who may begin to understand persuasive intent of
4 commercials are not fully able to understand that marketing by self-interested
5 corporations influences their desires.

6 50. "Comprehension of an advertiser's motives or intentions in conveying
7 commercial messages poses a mental challenge that children below roughly 8 years of
8 age are poorly equipped to handle. A younger child is more likely to focus on the
9 product featured in an advertisement, as opposed to thinking about the company that
10 produced it, or the abstract concept of their economic interests."²²

11 51. Thus, because these children do not understand marketing, they are
12 inherently deceived by the marketing, just as adults are deceived by deliberately
13 misleading marketing.

14 52. Marketing poor-nutrition Happy Meals to California children leads them
15 to prefer, purchase, and pester their parents to buy poor-nutrition Happy Meals.

16 53. Children influence their families' expenditures each year.²³ Children as a
17 consumer group, including those eight and younger, spend approximately \$200 billion
18 each year themselves.²⁴ One-third of what they spend is on food and beverages.²⁵

22 ²² Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content, Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at
23 22 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage) (forthcoming).

24 ²³ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
25 1-4 (National Academies Press 2006).

26 ²⁴ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
27 1-4 (National Academies Press 2006).

28 ²⁵ J.U. McNeal *Tapping the Three Kids' Markets*, AMERICAN DEMOGRAPHICS (April 1998), at 36, accessed on LexisNexis, February 9, 2006.

1 54. After being constantly bombarded with advertising for Happy Meals that
2 often feature toys, California children then bombard their parents with requests for the
3 toys and Happy Meals they have seen advertised.

4 55. These requests sometimes lead parents to purchase poor-nutrition Happy
5 Meal items they would otherwise not buy. Parham's daughters have requested Happy
6 Meals from Parham because of McDonald's marketing practices, and sometimes
7 Parham, not wishing to cause family rancor, purchases such meals.

8 56. Most California children have no concept of what it means to eat a healthy
9 diet.

10 57. Children rely on outside sources, including parents, friends, and the
11 media, full of powerful advertisements for poor-nutrition Happy Meals, to influence or
12 determine what they should eat.²⁶

13 58. "Food and beverage marketing practices geared to children and youth are
14 out of balance with healthful diets, and contribute to an environment that puts their
15 health at risk."²⁷

16 59. The marketing of poor-nutrition Happy Meals to California children
17 contributes to their desire to consume and request these products. This type of
18 marketing affects children's short-term and long-term dietary intakes and their
19 attitudes about nutrition.²⁸

20 60. Thus, the toy may appear to be "free," but consuming these meals has a
21 high actual health cost.

24 ²⁶ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
25 5-28 (National Academies Press 2006).

26 ²⁷ Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content,*
27 *Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at
28 36 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage) (forthcoming).

²⁸ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
5-35-38 (National Academies Press 2006).

1 61. Moreover, according to Roy Bergold, who served as McDonald's
2 advertising head for twenty-nine years, "the toys usually aren't free—they're priced
3 into the meal and companies have found that kids are a lot more tempted by the toys
4 than the food."²⁹

5 62. For all of these reasons, McDonald's unfair and deceptive practice of
6 advertising Happy Meals to children by using the lure of a toy directly and proximately
7 inculcates poor dietary habits in California children, placing them at a lifelong risk of
8 developing a myriad of health problems.

9 63. This in turn contributes to the rising cost of health care in this country.

10 64. This marketing also interferes with and undermines parental control over
11 the health and welfare of their children.

12 65. This action seeks to stop one of the most powerful, unfair, and deceptive
13 practices – tempting kids with toys to get them to nag their parents to buy Happy
14 Meals, thereby restoring an environment in which children and their parents can make
15 dietary choices free from unfair and deceptive child-targeted marketing.

16 66. Fast-food companies – with McDonald's by far in the lead – spent over
17 \$520 million on marketing and sales promotions, including toys, to advertise children's
18 meals.³⁰ Toy premiums made up almost three-quarters of those expenses, totaling over
19 \$350 million. According to data from the NPD Group, fast food restaurants sold more
20 than 1.2 billion children's meals with toys to children ages 12 and under, accounting for
21 20% of all child traffic at those restaurants.³¹ On information and belief, McDonald's

24 ²⁹ Bergold, Jr., Roy T. "The Obesity Debate." QSR Magazine 2 November 2010: n.
25 pag. Web. 2 November 2010, available at www.qsrmagazine.com/articles/columnist/roy_bergold/1110/obesity-1.phtml.

26 ³⁰ Federal Trade Commission, *Marketing Food to Children and Adolescents* at ES-3
27 (2008), available at www.ftc.gov/os/2008/07P064504foodmktingreport.pdf. The 2006
28 data in this FTC report are the most recent available publicly.

³¹ *Ibid.*

1 spends far more and distributes far more toys (along with poor-nutrition meals) than
2 any other fast food restaurant.

3 67. McDonald's intent is clear, but internal documents make the intent even
4 clearer.

5 68. One internal McDonald's document brags that "The ultimate goal is to
6 make McDonald's the overwhelming favorite restaurant to visit for adults, *just as it*
7 *already is for kids.*"³²

8 69. Another internal document is more specific: "*McDonald's has strong*
9 *appeal among children because of Happy Meals including fun toys, games, and prizes.*
10 McDonald's also attracts children with the . . . food (especially hamburgers,
11 cheeseburgers, and French fries) and the advertising. . . . *[C]hildren are more attracted*
12 *to McDonald's because of the Happy Meal promotion . . .*"³³

13 70. By advertising Happy Meals with toys as bait, McDonald's unfairly and
14 deceptively markets directly to children. When McDonald's bombards children with
15 advertisements or other marketing for Happy Meals with toys, many children will
16 pester their parents repeatedly to take them to McDonald's, just so they can get the
17 current toy (usually a new one each week). Once there, the children are likely to receive
18 a meal that is too high in calories, saturated fat, added sugars, and sodium, and devoid
19 of whole grains. Developing a lifelong habit of eating unhealthy meals is likely to
20 promote obesity, high blood pressure, heart disease, diabetes, and other life-threatening
21 or debilitating diet-related diseases. These consequences are all caused by kids being
22 baited by a cheap toy.³⁴

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25 ³² Source: McDonald's Management News, published for McDonald's
owners/operators and store management.

26 ³³ Source: McDonald's Fast Track Report [emphasis added].

27 ³⁴ This complaint is limited to toys and other premiums sold with Happy Meals,
28 although we note that items for which consumers pay extra, like the since-recalled
Shrek glasses, and the Mighty Meals aimed at older kids also contribute to the problem.

71. Children in California spend as much time using screen media (television, videos, video games, and computers) as they spend playing outside.³⁵ Children under the age of six watch over an hour of television per day, and the amount of television watched increases with age.³⁶ Annually, children in California view tens of thousands of television commercials, with at least 30,000 commercials representing a common ceiling.³⁷ Approximately half of the commercials during children's programming (as classified by the Federal Communications Commissions) are for poor-nutrition food.³⁸ Children in California, therefore, see approximately 15,000 television commercials for poor-nutrition food each year. (Of course, they see a multitude of other food advertisements on the Internet, in restaurant windows, and elsewhere).

72. Nearly all food advertisements viewed by children and adolescents are for products high in fat, sugar, or sodium,³⁹ and there is increasing evidence that the marketing of unhealthy food products is disproportionately targeted at ethnic minority children.⁴⁰

³⁵ Kaiser Family Foundation, *Zero to Six: Electronic Media in the Lives of Infants, Toddlers and Preschoolers* (2003), available at <http://www.kff.org/entmedia/upload/Zero-to-Six-Electronic-Media-in-the-Lives-of-Infants-Toddlers-and-Preschoolers-PDF.pdf>.

³⁶ Kaiser Family Foundation, *Zero to Six: Electronic Media in the Lives of Infants, Toddlers, and Preschoolers* (21003), available at <http://www.kff.org/entmedia/upload/Zero-to-Six-Electronic-Media-in-the-Lives-of-Infants-Toddlers-and-Preschoolers-PDF.pdf>.

³⁷ Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content, Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at 6 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage) (forthcoming).

³⁸ INSTITUTE OF MEDICINE, *FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?* 4-42 (National Academies Press 2006).

³⁹ Children: 98%; adolescents: 89%.

⁴⁰ Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content, Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at 11-12 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage) (forthcoming).

73. McDonald's is a leader in these forms of food advertising to young children. Its advertisements directed at young children generally focus on the Happy Meal toy and not on the food content of the Happy Meal.

74. McDonald's is well aware of the impact of "pester power" on parents' purchasing decisions and uses it to its advantage by advertising Happy Meals with toys.

75. For example, McDonald's founder Ray Kroc said that "if you had \$1 to spend on marketing, *spend it on kids, because they bring mom and dad.*"⁴¹

76. The toy has been the key to successful marketing to children of Happy Meals. Joe Johnston, who was on the advertising-agency team in the early 1970s that invented McDonald's Fun Meal, which later became the Happy Meal once a toy was added, acknowledged that "Yes, even then, we knew that *we needed a toy to make it work*".

77. A consultant for McDonald's brags, "McDonald's knows that by targeting families, it hits one of the most attractive, loyal consumer groups available. It gets into *the parents' wallets via the kids' minds*". Given the strength of this strategy, it's no wonder that McDonald's has become what it is.⁴²

78. McDonald's has a long history of targeting children and families. McDonald's Founder Kroc boasted, "we used to spot good locations for McDonald's stores by flying over a community and looking for schools and church steeples."⁴³

⁴¹ Roy T. Bergold, Jr., "Is Obesity Really Our Fault?" QSR Magazine (June 2010), accessible at www.qsrmagazine.com/articles/columnists/roy_bergold/0610/obesity-1.phtml. Mr. Bergold was McDonald's advertising head for 29 years.

⁴² Martin Lindstrom, "Branding: Its [sic] All About Focus," available at www.martinlindstrom.com/index.php/cmsid__list_articles/__1159. Mr. Lindstrom advises McDonald's on all aspects of brand building including sensory branding, neuromarketing and optimization. http://www.martinlindstrom.com/index.php/cmsid__consulting.

⁴³ Kroc, Ray, *Grinding It Out: The Making of McDonald's*, p.176 (Contemporary Books, Inc. 1976).

1 79. The deceptive nature of McDonald's Happy Meals marketing is not
2 debatable. Even industry insiders recognize it.

3 80. The long-time head of McDonald's advertising recently commented that
4 "Research says that *seven-year-olds and younger accept what we say in advertising as*
5 *the truth*. Heck, three-year-olds can identify brands using just their corporate logos.
6 According to a survey commissioned by the Center for a New American Dream back in
7 2002, the average kid asks his parent for something nine times before the parent gives
8 in....*What's a mother to do under this assault?*"⁴⁴

9 81. "In an ideal world, perhaps parents would ignore all of children's
10 requests for lavish toys and unhealthy snack foods, but, in fact, research is clear that
11 parents have a high rate of yielding to children's purchase-influence requests.
12 Moreover, most children begin to receive their own spending money as young as eight
13 years of age, and one of the earliest products they are allowed to buy without explicit
14 parental consent is snack foods."⁴⁵

15 82. After the Center for Science in the Public Interest (CSPI), lead counsel in
16 this action, sent notice of intent to sue to McDonald's (in an unsuccessful effort to
17 resolve this problem without litigation), a marketing-industry insider noted that "CSPI
18 claims McD's violates several state consumer laws because advertising to kids is
19 'inherently deceptive, because young kids are not developmentally advanced enough to
20 understand the persuasive intent of marketing.' *This, as a fact, is true.*"⁴⁶

21
22 ⁴⁴ Roy T. Bergold, Jr., *supra*.

23 ⁴⁵ Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content,*
24 *Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at
33 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage) (forthcoming).

25 ⁴⁶ Jim Edwards, "How McDonald's Happy Meal Will Survive This Perfect Storm of
26 Child Abuse Accusations and Litigation." CBS Interactive (July 8, 2010), available at
27 [http://www.bnet.com/blog/advertising-business/how-mcdonald-8217s-happy-meal-](http://www.bnet.com/blog/advertising-business/how-mcdonald-8217s-happy-meal-will-survive-this-perfect-storm-of-child-abuse-accusations-and-litigation/5156)
28 [will-survive-this-perfect-storm-of-child-abuse-accusations-and-litigation/5156](http://www.bnet.com/blog/advertising-business/how-mcdonald-8217s-happy-meal-will-survive-this-perfect-storm-of-child-abuse-accusations-and-litigation/5156)
[emphasis added]. Mr. Edwards is former managing editor of *Adweek* and has covered
drug marketing at *Brandweek*.

83. It is also true that businesses that refuse to bribe children to drive their profits are at a competitive disadvantage.

84. Parents in California have almost no ability or opportunity to control where and how their children view marketing. Marketing aimed at California children is everywhere: on television, in magazines, on Web sites, on billboards, on school buses, in restaurants, and in school cafeterias and on school vending machines.

85. On information and belief, McDonald's is aware of the inability of California children to understand the persuasive intent of marketing and its impact on their decision-making. Yet, in California, McDonald's knowingly takes advantage of the cognitive immaturity of children and advertises poor-nutrition Happy Meals to them, often advertising "free" toys to make its marketing efforts particularly persuasive.

IV. McDonald's Advertising Directly, Proximately, and Cognizably Harms California Children and Their Parents

86. California parents' lack of control over the marketing of Happy Meals to their children strains their ability to raise healthy children and to instill healthy eating habits in them.⁴⁷

87. McDonald's deceptively markets Happy Meals, continuing its decades-old practice of advertising Happy Meals with toys to market directly to children in order to bypass the parents and increase sales.

88. After years of criticism of its marketing practices, McDonald's pledged to the Better Business Bureau that it would advertise only Happy Meals that meet McDonald's own nutrition standards for children (although those standards are weaker than appropriate). However, that pledge fails to address McDonald's insidious use of toys in advertising its products to children. Regardless of the Happy Meal combinations

⁴⁷ JULIET B. SCHOR, BORN TO BUY 130-32, 160-65 (Scribner 2004).

1 shown in advertising, almost all Happy Meal combinations are nutritionally
 2 inappropriate for very young children. Moreover, the default⁴⁸ choice for the side dish
 3 tends to be the nutritionally poor French fries, not the less-harmful (but still not
 4 healthy) Apple Dippers with sugary Caramel Dipping Sauce.⁴⁹

5 89. A reasonable lunch for a young child should contain no more than 430
 6 calories (one-third of the 1,300 calories that is recommended daily intake for sedentary
 7 children 4 to 8 years old)

8 90. The pre-suit notice delivered to McDonald's on June 22, 2010, described
 9 the problems set out in detail herein, describing the number of unhealthy meals thus:
 10 McDonald's Web site lists 24 Happy Meal combinations. Considering that a reasonable
 11 lunch for a young child would contain no more than 430 calories (one third of the 1,300
 12 calories that is the recommended daily intake for children 4 to 8 years old), not a single
 13 Happy Meal meets that target. The average of all 24 meals is 26 percent higher in
 14 calories than a reasonable lunch. In fact, one meal (cheeseburger, French fries, and
 15 chocolate milk) hits 700 calories — a whopping 63 percent higher (and more than half
 16 the calories for the entire day).
 17
 18

19 91. The source for these numbers was McDonald's own published Happy
 20 Meals nutrition information available on its website, and dated June 2, 2010.

21 92. Three days after it received the pre-suit notice, McDonald's altered this
 22 data, reducing the amount of calories and sugar.⁵⁰
 23

24
 25 ⁴⁸ A "default" item is one that the McDonald's employee includes in a Happy Meal
 without asking.

26 ⁴⁹ Apple Dippers consist of apple slices and a sugary caramel dipping sauce,
 27 effectively the kind of caramel apple one might buy a carnival.

28 ⁵⁰ Nutrition.mcdonalds.com/nutritionexchange/Happy_Meals_Nutrition_List.pdf
 (last accessed December 14, 2010).

1 93. After McDonald's altered its own data, three of the 24 meals suddenly met
2 the calorie target described in the pre-suit notice.

3 94. Plaintiff has no idea why McDonald's would suddenly alter its own data
4 in a manner that made these three meals appear healthier (but still not healthy — all 24
5 meals exceed 400 mg of sodium, one-third of the 1,200-milligram recommendation for
6 sodium for children).

7 95. In a CSPI study of 44 McDonald's outlets, the default Happy Meal almost
8 always included French fries. In response to a request for a hamburger Happy meal, the
9 McDonald's employee, without asking customers which side dish they wanted,
10 provided fries 93 percent of the time.⁵¹ (Beverage choices were usually offered, but a
11 soft drink was the first option offered 78 percent of the time.)
12

13 96. Thus, McDonald's claims it is serving up healthier options, but in fact it is
14 not, for several reasons:
15

- 16 • The best-possible combination is still fried chicken and a caramel apple.⁵²
- 17 • Although McDonald's briefly depicts the best-possible combinations in its
18 advertising, those depictions are fleeting. It engages in bait-and-switch
19 93% of the time, substituting the far-more-unhealthy French fries for
20 Apple Dippers. Indeed, many of McDonald's commercials aimed at very
21 young children are intended to spur visits to McDonald's stores rather
22
23

24 ⁵¹ Twenty-seven health and nutrition professionals visited 44 restaurants in 14
25 states. They purchased 41 Happy Meals inside of restaurants and 34 drive-throughs, for
26 a total of 75 assessments.

27 ⁵² This meal consists of four fried Chicken McNuggets and less than half of one
28 small apple accompanied by caramel sauce, with less calories, saturated fat, and sodium
than the other choices.

1 than to promote a particular food item...but, of course, the toys are
2 heavily featured.

- 3 • On information and belief, the cost of McDonald's to produce an order of
4 French fries is significantly less than the cost to produce the apples and
5 dipping sauce for the Apple Dippers. Thus, McDonald's bait-and-switch
6 practice is likely based largely on financial motives.

7
8 97. McDonald's duplicitous approach to marketing directed to children can
9 be seen in a recent press release that boasts that the Company's Shrek-based promotion
10 will "encourage kids to 'Shrek Out' their Happy Meals around the world with menu
11 options like fruits, vegetables, low-fat dairy and fruit juices."⁵³ In reality, though, the
12 whole point of the Shrek promotion is to get kids into McDonald's where they most
13 likely will end up being served unhealthy default options and eating unhealthy meals.

14 98. Consider the Happy Meal composed of a cheeseburger, French fries, and
15 chocolate milk. That meal has 700 calories (more than half a day's worth for sedentary
16 young children), 9 grams of saturated fat (more than half the 14 gram recommended
17 limit), 1,080 milligrams of sodium (more than three-fourths of the 1,200 milligram limit),
18 and about twice the 16-gram recommended daily limit for added sugars. Furthermore,
19 the bun is made with white flour, not the whole-wheat flour that is recommended for at
20 least half a consumer's grain intake.
21
22
23
24
25

26 ⁵³ [www.aboutmcdonalds.com/mcd/media_center/recent_news/corporate/
27 Press_Release_McDonalds_Launches_Shrek_Themed_Happy_Meal_to_Motivate_Kids_
28 to_Eat_More_Fruits_Vegetables_and_Dairy.html](http://www.aboutmcdonalds.com/mcd/media_center/recent_news/corporate/Press_Release_McDonalds_Launches_Shrek_Themed_Happy_Meal_to_Motivate_Kids_to_Eat_More_Fruits_Vegetables_and_Dairy.html)

V. **Plaintiff's Experience**

99. Parham's daughters, ages two and six, continually clamor to be taken to McDonald's "for the toys."

100. Parham's daughters have been deceived by McDonald's marketing practices.

101. Parham's daughters do not understand that McDonald's marketing efforts are intended to make them want to eat Happy Meals. The girls interpret this marketing as good advice for proper eating.

102. Often, Parham's daughters want Happy Meals because toys based on trusted characters from television and movies (such as Shrek) endorse the Happy Meals in McDonald's advertising.

103. Some of the many toys that have induced Parham's daughters to clamor for Happy Meals and to pester Parham to purchase Happy Meals for the sake of obtaining a toy are:

- I-Carly lip gloss and note pad
- Various stuffed toys (intended for use by children under three)
- Barbie lip gloss and small comb
- Shrek movie character figures
- Strawberry Shortcake mini-dolls with paper and mini-stamps
- "American Idol" toy

104. McDonald's marketing practices are unfair to Parham and the members of the Parents Class and both unfair and deceptive to Parham's daughters and other California children under the age of eight.

105. McDonald's has unfairly influenced Parham's daughters. Its Happy Meals advertising aimed at children has influenced their desire for the toy and therefore their

1 desire to eat the poor-nutrition Happy Meals, thereby harming their health without
2 their knowledge or comprehension.

3 106. When given the choice, Parham's daughters want to eat Happy Meals
4 instead of fruits, vegetables, and whole grains because McDonald's has convinced them
5 that they need to get the toy.

6 107. McDonald's marketing practices are unfair to Parham and members of the
7 Parents Class.

8 108. One instance that is particularly frustrating to Parham, because it is
9 outside of her control, is that her six-year-old daughter's friends are McDonald's viral
10 marketers.

11 109. Parham's six-year-old daughter learns of Happy Meal toys from other
12 children in her playgroup, despite Parham's efforts to restrict her exposure to
13 McDonald's advertising and her access to Happy Meal toys.

14 110. This is McDonald's advertising directive – to subvert parental authority
15 and mobilize pester power in order to sell unhealthful meals to kids using the lure of a
16 toy.

17 111. McDonald's has unfairly interfered with Parham's relationship with her
18 children.

19 112. Because of McDonald's marketing, Parham's daughters frequently pester
20 Parham into purchasing Happy Meals, thereby spending money on a product she
21 would not have otherwise purchased.

22 113. Parham often purchases each Happy Meal two times over, as her two-
23 year-old daughter wants to follow her older sister's example, and becomes upset if she
24 does not also receive a Happy Meal toy.

1 114. Although Parham frequently denies her daughters' repeated requests for
 2 Happy Meals, these denials have angered and disappointed her daughters, thus causing
 3 needless and unwarranted dissension in their parent-child relationship.

4 115. Parham's daughters' exposure to Happy Meal marketing has undermined
 5 Parham's parental authority, because while the advertisements result in her daughters'
 6 desire for poor-nutrition Happy Meals, as children, they lack the ability to decipher the
 7 promotional ploy and to understand why Parham will not generally buy them Happy
 8 Meals.
 9

10 CLASS ACTION ALLEGATIONS

11 116. Parham brings this action on behalf of herself and on behalf of all
 12 California residents who purchased Happy Meals during the Class Period and are
 13 parents of California children under the age of eight who have seen marketing for
 14 Happy Meals ("Parents Class").
 15

16 117. Specifically excluded from the Parents Class are any entity in which
 17 McDonald's has a controlling interest, and the officers, directors, employees, affiliates,
 18 subsidiaries, legal representatives, heirs, successors and their assigns of any entity,
 19 together with any immediate family member of any officer, director or employee of said
 20 companies. Also excluded from the class is any judge or judicial officer presiding over
 21 this action and members of their families within the third degree of relationship.
 22

23 118. The Parents class consists of at least 100,000 members. Thus, the class is
 24 too numerous to make it practicable to join all members as plaintiffs.

25 119. For the Parents class, there are questions of law and fact that are
 26 substantially similar and predominate over any questions affecting only individual
 27 class members. These issues include:
 28

- a. Whether McDonald's has engaged in unfair practices;

- b. Whether McDonald's has engaged in deceptive practices;
- c. The extent to which members of the Parents Class have been injured as a result of these practices;
- d. Whether these practices render McDonald's in violation of California's Unfair Competition Law, California Business and Professions Code § 17200 and § 17500 *et seq.*; and California's CLRA § 1750 *et seq.*

120. Parham's claims are typical of the claims of the Parents Class she seeks to represent.

121. Parham will fairly and adequately protect the interest of the class. She intends to prosecute these claims vigorously and seek to obtain relief that would benefit the entirety of each class. She has no conflicts with their respective classes.

122. Counsel for Parham are qualified to litigate the claims of each class.

123. Common issues of law and fact predominate over issues affecting only individuals.

124. A class action is superior to other available methods to resolve the controversies arising from McDonald's practices as the issues presented are both numerous and substantial. Thus, adjudication of the claims raised by means of a class action will provide substantial benefits to both the litigants and the court. Many of the members of the Parents Class are likely unaware of their legal rights. In the absence of class actions, many members of each class would not have their claims redressed.

125. Therefore, Parham seeks certification pursuant to the Consumer Legal Remedies Act, California Civil Code § 1750, *et seq* and California Code of Civil Procedure § 382.

CLAIMS FOR RELIEF

COUNT I

ENGAGING IN UNFAIR MARKETING AND BUSINESS PRACTICES

(Parham individually and as class representative)

126. It is unlawful to engage in unfair acts or practices while engaged in any trade or commerce in California. California Business and Professions Code § 17200 *et seq.*

127. McDonald's violates the California Unfair Competition Law each time it markets Happy Meals to California children.

128. Plaintiff has lost money or property because of Defendants' activities, and therefore has suffered an "injury in fact."

COUNT II

ENGAGING IN UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES

(Parham individually and as class representatives)

129. "Unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful." Consumer Legal Remedies Act California Civil Code § 1750, *et seq.* ("CLRA").

130. The Happy Meals at issue are "goods" as defined by CLRA § 1761(a).

131. Defendants are "persons" as defined by CLRA § 1761(c).

132. Plaintiff and the Putative Class members are "consumers" as defined by CLRA § 1761(d).

133. The purchase of Happy Meals by the Plaintiff and Putative Class members are "transactions" as defined by CLRA § 1761(e).

1 134. McDonald's advertising and selling Happy Meals with toys to very young
2 children is prohibited pursuant to the CLRA because it is inherently deceptive and was
3 "undertaken by any person in a transaction intended to result or which results in the
4 sale or lease of goods or services to any consumer."

5 135. McDonald's violates the CLRA by knowingly and intentionally
6 advertising Happy Meals with toys to very young children.

7 136. This unfair and deceptive practice violates CLRA § 1770(a)(5), which
8 prohibits "Representing that goods or services have sponsorship, approval,
9 characteristics, ingredients, uses, benefits, or quantities which they do not have . . ."

10 137. This unfair and deceptive practice is also a violation of CLRA § 1770(a)(7)
11 which prohibits "Representing that goods or services are of a particular standard,
12 quality, or grade, or that goods are of a particular style or model, if they are of another."
13

14 138. McDonald's unfair and deceptive acts and practices have violated, and
15 continue to violate the CLRA, because they extend to transactions that are intended to
16 result, or have resulted, in the sale or lease of goods or services to consumers, including
17 the Plaintiff and the Putative Class members.
18

19 139. As a direct and proximate result of McDonald's unfair and deceptive acts
20 and practices, the Plaintiff and the Putative Class members have suffered damage in
21 that they purchased deceptively advertised and unhealthy Happy Meals.
22

23 140. Plaintiff would not have bought Happy Meals but for McDonald's
24 deceptive marketing to very young children with a toy.
25
26
27
28

COUNT III

**ENGAGING IN UNLAWFUL METHODS OF COMPETITION AND
UNFAIR OR DECEPTIVE ACTS OR PRACTICES**

(Parham individually and as class representatives)

141. McDonald's acts and practices constitute unlawful business acts and practices.

142. McDonald's marketing with toys and other inducements is inherently deceptive to very young children.

143. McDonald's business practices alleged above are unlawful under the CLRA, which forbids deceptive advertising, among other things. By violating the CLRA, McDonald's has committed unlawful acts and have violated California Business and Professions Code § 17200 *et seq.*

RELIEF REQUESTED

Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that the Court:

1. Certify the claims to be asserted as a class action pursuant to the Consumer Legal Remedies Act, California Civil Code § 1750, *et seq* and California Code of Civil Procedure § 382.

2. Declare that McDonald's advertising acts and practices violate the California Unfair Competition Law and the California Consumer Legal Remedies Act.

3. Enjoin McDonald's from continuing to advertise Happy Meals to California children featuring toys.

4. Award costs and attorney's fees, in an amount to be determined at trial.

5. Order McDonald's to pay reasonable costs, attorneys' fees, and expert fees.

6. Grant all other relief that the Court deems just and proper.

JURY REQUEST

PLAINTIFFS REQUEST A TRIAL BY JURY AS TO ALL ISSUES SO TRIABLE.

Dated January 5, 2011

Baker Law, P.C.
2229 1st Avenue North
Birmingham, AL 35203
G. Richard Baker, Esquire

Center for Science in the
Public Interest
5646 Milton Street, Suite
211
Dallas, TX 75206
Stephen Gardner, Esquire
Seema Rattan, Esquire

EXHIBIT B

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37 Trials Digest 12th 6

Page 1

37 Trials Digest 12th 6 (Cal.Superior), 2009 WL 2736967
For Opinion See 2009 WL 3169396 (Trial Order), 2005 WL 5191258 (Trial Order)

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Superior Court, San Francisco County, California.

Gutierrez vs. Autowest Inc.

TOPIC:

Synopsis: Class members claim company violated California Vehicle Leasing Act

Case Type: Consumer Protection; False Advertising; Contracts; Leased Goods; Class Action

DOCKET NUMBER: CGC05317755

STATE: California

COUNTY: San Francisco

Verdict/Judgment Date: February 25, 2009

JUDGE: James A. Robertson II

ATTORNEYS:

Plaintiff: Nancy Barron, Kemnitzer, Anderson, Barron & Ogilvie, San Francisco; Christopher Jennings, Kemnitzer, Anderson, Barron & Ogilvie, San Francisco; Bryan Kemnitzer, Kemnitzer, Anderson, Barron & Ogilvie, San Francisco.

Defendant: Laura K. Christa, Christa & Jackson, Los Angeles; Martin L. Fineman, Davis Wright Tremaine, San Francisco; Paul M. Kakuske, Christa & Jackson, Los Angeles; Regina J. McClendon, Severson & Werson, San Francisco.

SUMMARY:

Verdict/Judgment: Plaintiff

Verdict/Judgment Amount: \$153,126

Range: \$100,000-\$199,999

Defendant Autowest was ordered to pay \$82,848 to the class and \$70,278 to plaintiffs Ryan and Jamie Gutierrez, jointly (\$18,426 for violations of the California Legal Remedy Act, \$36,852 for punitive damages, and \$7,500 as an incentive award). Defendant Autowest was also ordered to pay \$1,494,988 in attorney fees and \$63,265 in costs.

Trial Type: Bench

EXPERTS:

Plaintiff: Not reported.

Defendant: Not reported.

TEXT:**CASE INFORMATION****FACTS/CONTENTIONS**

According to court records: Plaintiffs Ryan and Jamie Gutierrez alleged defendants Autowest Inc., dba Autowest Dodge; AutoNation USA Corporation; and Wells Fargo Bank Ltd., violated the California Vehicle Leasing Act, Civil Code § 2885.7 et seq. and the California Consumer Legal Remedies Act, Civil Code § 1750 et seq. Plaintiffs filed a lawsuit on behalf of themselves and other class members who entered into vehicle lease agreements with defendant Autowest from March 1, 1998 through March 1, 2001.

On April 13, 2007, the court certified the class of persons who: (1) entered into a vehicle lease agreement primarily for personal, family, or household use with Autowest Dodge from March 1, 1998 through November 1, 2001, in which the agreement was drafted on a Wells Fargo lease form; (2) the copy of the lease agreement failed to contain a separate statement labeled "itemization of Gross Capitalized Cost" circumscribed by a line and containing the disclosures required by Civil Code § 2985.8(c)(2) at the time it was signed by the consumer; or (3) Autowest obtained the customer's signature on a copy of the lease agreement that contained blank spaces to be filled in after it had been signed.

CLAIMED INJURIES

NA

CLAIMED DAMAGES

According to court records:

Not reported.

SETTLEMENT DISCUSSIONS

According to court records:

Not reported.

COMMENTS

According to court records:

The complaint was filed on December 29, 2000.

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37 Trials Digest 12th 6 (Cal.Superior), 2009 WL 2736967

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36 Trials Digest 12th 2

Page 1

36 Trials Digest 12th 2 (Cal.Superior), 2009 WL 2595961

For Opinion See 2009 WL 3169400 (Trial Order), 2009 WL 3169397 (Trial Order), 2009 WL 3169399 (Trial Order), 2009 WL 3169398 (Trial Order)

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Superior Court, San Francisco County, California.

Wilkinson vs. S&C Ford Inc.

TOPIC:

Synopsis: SETTLEMENT -- Woman sues under CLRA for denial of insurance claim

Case Type: Consumer Protection; Other; Insurance; Automobile Policy; Insurance; Bad Faith & Coverage; Un-fair Competition & Business Practices; Other

DOCKET NUMBER: CGC06458397

STATE: California

COUNTY: San Francisco

Verdict/Judgment Date: May 21, 2009

JUDGE: Peter J. Busch

ATTORNEYS:

Plaintiff: Kim E. Card, Law Offices of Kim E. Card, Berkeley; Wesley M. Lowe, Mannion & Lowe, San Francisco; E. Gerard Mannion, Mannion & Lowe, San Francisco.

Defendant: Thomas M. Crowell, Toschi, Sidran, Collins & Doyle, Oakland; Terry S. Dall, Dall Law Firm, Mission Viejo; Mohammed S. Mandegary, Tressler, Soderstrom, Maloney & Priess, Costa Mesa; Kristin L. Moran, Dall Law Firm, Mission Viejo; Linda Bondi Morrison, Tressler, Soderstrom, Maloney & Priess, Costa Mesa; David R. Sidran, Toschi, Sidran, Collins & Doyle, Oakland.

SUMMARY:

Verdict/Judgment: Settlement

Verdict/Judgment Amount: \$85,000

Range: \$50,000-\$99,999

Plaintiff settled with defendant ANPCC for \$50,000 on May 21, 2009 and defendants S&C for \$35,000 on March 13, 2009. The court awarded plaintiff \$158,746 in mandatory **attorney fees** under the **Consumers Legal Remedies Act**.

Trial Type: Settlement

EXPERTS:

Plaintiff: Not reported.

Defendant: Not reported.

TEXT:

CASE INFORMATION

FACTS/CONTENTIONS

According to court records: On October 7, 2005, plaintiff Constance Wilkinson purchased a 2005 Ford Mustang from defendants S&C Ford Inc. and S&C Motors. Plaintiff said she also purchased insurance coverage for the Mustang. On December 2, 2005, the Mustang was involved in an accident and was totaled.

Plaintiff submitted a claim to defendants Carousel Insurance Services Inc. ("CIS"), American National Property & Casualty Company ("ANPCC"), E.L. Rudy Insurance Services, and Eric Lance Rudy, but the claim was denied.

Plaintiff alleged she complied with all necessary terms and conditions and that defendants failed to procure, obtain, and arrange the insurance coverage they had represented they would obtain. Plaintiffs alleged defendants acted in bad faith.

CLAIMED INJURIES

NA

CLAIMED DAMAGES

According to court records:

Not reported.

SETTLEMENT DISCUSSIONS

According to court records:

Plaintiff accepted defendant S&C's CCP § 998 offer of \$35,000 on March 13, 2009.

COMMENTS

According to court records:

The complaint was filed on December 4, 2006.

Terry S. Dall and Kristin L. Moran represented defendants CIS and ANPCC. Linda Bondi Morrison and Mohammed S. Mandegary represented defendant ANPCC. David R. Sidran, Thomas M. Crowell, and Kim E. Card represented defendants S&C and PCG Rhode Island, erroneously sued as S&C Motors Inc.

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San Francisco County Superior Court

36 Trials Digest 12th 2 (Cal.Superior), 2009 WL 2595961

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44 Trials Digest 10th 7

Page 1

44 Trials Digest 10th 7 (Cal.Superior), 2007 WL 3116582
For Opinion See 2006 WL 4937162 (Trial Order), 2006 WL 4937164 (Trial Order)

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Superior Court, San Diego County, California.

Brown vs. Edgewater Powerboats LLC

TOPIC:

Synopsis: Boat buyer says vessel defective, manufacturer, dealer responsible
Case Type: Consumer Protection; Lemon Law; Fraud & Misrepresentation; Fraud

DOCKET NUMBER: GIC857249

STATE: California

COUNTY: San Diego

Verdict/Judgment Date: May 23, 2007

JUDGE: Patricia Y. Cowett

ATTORNEYS:

Plaintiff: Ira James Harris, Law Offices of Ira James Harris, Orinda.

Defendant: Mark S. Bagula, The Watkins Firm, San Diego; Timothy D. Lucas, Parker & Stanbury, San Diego;
Stephen D. Lucas, Lucas & Haverkamp, San Diego; Teresa Powell, The Watkins Firm, San Diego.

SUMMARY:

Verdict/Judgment: Plaintiff

Verdict/Judgment Amount: \$457,000

Range: \$200,000-499,999

Plaintiff settled with defendant Boat Depot for \$150,000 before trial. \$174,000 violation of the Song-Beverly Consumer Warranty Act, reduced by \$18,500 for plaintiff's usage; \$240,500 civil penalty for willful violation of Song-Beverly Consumer Warranty Act; \$5,000 negligence; \$20,000 violation of warranties; \$18,500 violation of the Consumer Legal Remedies Act; \$10,000 additional damages; \$7,500 for 5 percent of defendant Boat Depot settlement. The court then reduced the award by the allocated settlement with defendant Boat Depot. The court reduced the award by \$10,000 for the value of the boat, \$90,000 for the loss of use. The court then awarded \$38,461 in costs and \$305,935 in attorney fees, which were offset by \$50,000 in costs and fees from the settlement with defendant Boat Depot, and entered a total judgment in the amount of \$651,396.

Trial Type: Jury

Trial Length: Not reported.

Deliberations: Not reported.

Jury Poll: Not reported.

EXPERTS:

Plaintiff: Conrad Christensen, P.E., corrosion engineer, Alamo, (925) 930-7222.

Defendant: Gordon E. Lakso, metallurgist, Lafayette.; Todd Schwede, marine surveyor, Todd & Associates, San Diego, (619) 226-1895.

TEXT:

CASE INFORMATION

FACTS/CONTENTIONS

According to Plaintiff: Plaintiff Dwight Deacon Brown owned a defendant Edgewater Powerboats LLC's 2004 power boat. Plaintiff purchased the boat from defendant Boat Depot Inc. on Sept. 29, 2004 for \$62,441. Plaintiff said the boat emitted a strange noise, which defendant Boat Depot was unable to fix. Plaintiff said the boat took on large quantities of water on at least two occasions. After the first incident, defendant Boat Depot attempted to repair the boat, but was unsuccessful and the boat again took on water. Plaintiff said he demanded a refund, but both defendants refused to communicate with him.

Plaintiffs alleged violation of the Song-Beverly Consumer Warranty Act, fraud, and negligence.

Defendant Edgewater contended the damage to the boat was caused by plaintiff's failure to check if the trolling-motor control switch was properly attached to the Velcro attachment point. Defendant Edgewater also contended defendant Boat Depot contributed to the damage by ignoring the manufacturer's recommendations and installing the trolling-motor control switch in a place where it could easily fall into the bilge area of the boat.

CLAIMED INJURIES

NA

CLAIMED DAMAGES

According to Plaintiff: \$154,570 to \$306,270 lost use; \$58,873 cost of boat; \$3,569 upgrades; \$6,836 incidental damages.

SETTLEMENT DISCUSSIONS

According to Plaintiff: Not reported.

COMMENTS

According to Plaintiff: The complaint was filed on Nov. 18, 2005.

Stephen D. Lucas represented defendant Edgewater Powerboats. Timothy D. Lucas, Teresa Powell, and Mark S. Bagula represented defendant Boat Depot.

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San Diego County Superior Court/Central

44 Trials Digest 10th 7 (Cal.Superior), 2007 WL 3116582

END OF DOCUMENT

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22 Trials Digest 10th 5

Page 1

22 Trials Digest 10th 5 (Cal.Superior), 2004 WL 5324822

For Opinion See 2004 WL 5280217 (Trial Order), 2004 WL 5280218 (Trial Order), 2004 WL 5280216 (Trial Order), 2004 WL 5280220 (Trial Order), 2004 WL 5280221 (Trial Order), 2004 WL 5280219 (Trial Order)

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Superior Court, Los Angeles County, California.

McClanahan vs. Fleetwood

TOPIC:

Synopsis: Buyers of motor home sue for "lemon"

Case Type: Consumer Protection; Lemon Law; Fraud & Misrepresentation; Negligent Misrepresentation; Fraud & Misrepresentation; Business; Unfair Competition & Business Practices; Business Interference

DOCKET NUMBER: VC038269

STATE: California

COUNTY: Los Angeles

Verdict/Judgment Date: October 13, 2004

JUDGE: John A. Torribio

ATTORNEYS:

Plaintiff: Christopher P. Barry, Rosner, Law & Mansfield, San Diego; Hallen D. Rosner, Rosner, Law & Mansfield, San Diego.

Defendant: Jason M. Frank, Paul, Hastings, Janofsky & Walker, Los Angeles; Paula M. Harrelson, Prenovost, Normandin, Bergh & Dawe, Santa Ana; Thomas M. Murphy, Sutton & Murphy, Mission Viejo; Tom Roddy Normandin, Prenovost, Normandin, Bergh & Dawe, Santa Ana; Ronald M. Oster, Paul, Hastings, Janofsky & Walker, Los Angeles; Thomas Prenovost, Prenovost, Normandin, Bergh & Dawe, Santa Ana.

SUMMARY:

Verdict/Judgment: Plaintiff

Verdict/Judgment Amount: \$304,600

Range: \$200,000-499,999

\$204,600 against Freightliner Custom Chassis Corporation and Fleetwood Motor Homes, plus \$100,000 civil penalty against Freightliner Custom Chassis. The court granted plaintiffs \$13,025 in costs; \$45,516 pre-judgment interest, and \$117,713 in attorney fees. Judgment for defendant Cummins Engine Company, plus \$1,558 in costs. Judgment for defendant Mike Thompson's Recreational Vehicles, plus \$2,914 in costs.

Trial Type: Jury

Trial Length: Not reported.

Deliberations: Not reported.

Jury Poll: Not reported.

EXPERTS:

Plaintiff: Not reported.

Defendant: Not reported.

TEXT:

CASE INFORMATION

FACTS/CONTENTIONS

According to Plaintiff: On January 18, 2001, plaintiffs Susan M. and Brian A. McClanahan went to defendant Mike Thompson's Recreational Vehicles to purchase a new motor home. Plaintiffs selected a 2001 Discovery 36T. Plaintiffs filled out and signed a credit application in order to obtain financing. Plaintiffs gave defendant a \$2,000 post-dated check. Plaintiffs signed a Motor Vehicle Purchase Order on January 18, 2001 for the vehicle. As part of the purchase, plaintiffs agreed to trade in their 1998 Dolphin motor home. Plaintiffs owed approximately \$69,950 on their trade-in motor home, but were credited with a value of \$82,000 on the purchase contract. Unknown to plaintiffs, defendant appraised their trade-in motor home at approximately \$52,000. The \$30,000 over-allowance was then rolled into the cash price of the vehicle without plaintiffs' knowledge.

Plaintiffs alleged that defendant violated state and federal financial disclosure laws by rolling in the over-allowance on plaintiffs' trade-in motor home to the cash price of the vehicle. Defendant also failed to give plaintiffs a copy of their credit application as required by various state laws.

Defendant's express warranties accompanied the sale of the vehicle to plaintiffs by which defendant undertook to preserve or maintain the utility or performance of plaintiffs' vehicle or provide compensation if there were a failure in such utility or performance.

Plaintiffs alleged that the vehicle was delivered to them with serious defects and nonconformities to warranty and developed other serious defects and nonconformities to warranty, including engine overheating, check engine light coming on, power steering noise, coach batteries dying, air brake light coming on, slide-out misaligned, leak in skylight, back safety window inoperable, defective fresh water system, defective refrigerator, and other defects.

Plaintiffs alleged violation of the Song-Beverly Consumer Warranty Act, violation of the Magnuson-Moss Warranty Act, violation of the Automobile Sales Finance Act, violation of the **Consumers Legal Remedies Act**, commission of Unlawful, Unfair, or Fraudulent Business Acts and Practices (Business and Professions Code § 17200, et seq.), Injunctive and Equitable Relief, negligent repair, negligent misrepresentation, and negligence.

Other named defendants were Fleetwood Motor Homes of Indiana Inc.; Freightliner Custom Chassis Corporation; and Cummins Engine Company Inc.

CLAIMED INJURIES

NA

CLAIMED DAMAGES

According to Plaintiff: Not reported.

SETTLEMENT DISCUSSIONS

According to Plaintiff: Not reported.

COMMENTS

According to Plaintiff: The complaint was filed on October 9, 2002.

Thomas M. Murphy represented defendant Fleetwood Motor Homes. Ronald M. Oster, Jason M. Frank, Thomas Prenovost, Tom Roddy Normandin, and Paula M. Harrelson represented Mike Thompson's Recreational Vehicles. Thomas M. Murphy represented Fleetwood Motor Homes.

Trials Digest, A Thomson/West business

Los Angeles County Superior Court/Norwalk

22 Trials Digest 10th 5 (Cal.Superior), 2004 WL 5324822

END OF DOCUMENT

Westlaw

41 Trials Digest 5th 3

Page 1

41 Trials Digest 5th 3 (Cal.Superior), 2002 WL 31412474
For Dockets See 1-01-CV-797905

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Superior Court, Santa Clara County, California.

Kloppenberg vs. Auto First Financial

TOPIC:

Synopsis: SETTLEMENT--Used car buyer sues for consumer fraud

Case Type: Contracts; Purchase of Goods; Automobile; Fraud; Failure to Disclose

DOCKET NUMBER: CV797905

STATE: California

COUNTY: Santa Clara

Verdict/Judgment Date: May 1, 2002

JUDGE: Jamie Jacobs-May

ATTORNEYS:

Plaintiff: Jon P. Jacobs, Law Offices of Sharon Kinsey, Soquel.; Carole K. Johnston, Law Offices of Sharon Kinsey, Soquel.; Amanda K. Wilson, Law Offices of Sharon Kinsey, Soquel.

Defendant: Kevin Anderson, Anderson & Burrow, San Jose.; Lance Burrow, Anderson & Burrow, San Jose.

SUMMARY:

Verdict/Judgment: Settlement

Verdict/Judgment Amount: \$33,500

Range: \$1-\$49,999

The amount of the settlement paid off plaintiff's loan. The parties agreed that plaintiff's reasonable attorney fees and costs could be determined by the court. The court awarded \$115,554 in reasonable fees and costs.

Trial Type: Not Applicable

Trial Length: Not Applicable

EXPERTS:

Plaintiff: Robert Malpede, automotive consultant, Bay Automotive Consultants, Aptos, (831) 685-8203.

Defendant: Not reported.

FOR RELATED TRIAL DOCUMENTS SEE:

Answer of Auto First Financial, d.b.a. Los Gatos Auto Mall: 2001 WL 34786356

Complaint for Damages and Injunction • Fraud in the Inducement to Contract; • Violation of Consumers Legal

Remedies Act; • Breach of Commercial Code Express Warranty; and • Violation of Unfair Business Practices Act.: 2001 WL 34786375

TEXT:

CASE INFORMATION

FACTS/CONTENTIONS

According to Plaintiff: A used car buyer sued the seller for consumer fraud for failure to reveal a prior accident. The plaintiffs were Rodina Kloppenborg, a 28-year-old promotions and incentives manager at Covad Communications. The defendant was Auto First Financial dba Los Gatos Auto Mall. Plaintiff purchased a used 1995 BMW 325is from defendant. The dealer did not disclose that the vehicle had been in a prior serious accident that caused extensive front end and frame damage and left the BMW without a functioning air bag. Plaintiff alleged that defendant had a duty to disclose these facts, as defendant was aware of the damage and had sent the vehicle to a body shop to have the frame pulled, cut, and welded. Plaintiff also alleged that defendant covered the repairs with undercoating to actively conceal its acts.

Defendant contended that plaintiff bought 'as is' and thus it had no duty to disclose.

CLAIMED INJURIES

NA

CLAIMED DAMAGES

According to Plaintiff: \$34,000.

SETTLEMENT DISCUSSIONS

According to Plaintiff: At mediation, plaintiff demanded rescission plus attorney fees. Defendant offered \$20,500. At the first mandatory settlement conference, plaintiff demanded \$31,000 plus a fee petition of \$115,554. Defendant offered \$25,000. The matter settled at the second mandatory settlement conference for \$33,500 plus the fee petition.

Trials Digest, A Thomson/West business

Santa Clara County Superior Court

41 Trials Digest 5th 3 (Cal.Superior), 2002 WL 31412474

END OF DOCUMENT

EXHIBIT 2

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MCDONALD'S CORPORATION and
7 MCDONALD'S USA, LLC.

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 MONET PARHAM, on behalf of herself and
14 those similarly situated,

15 Plaintiff,

16 v.

17 McDONALD'S CORPORATION, and
18 McDONALD'S USA, LLC.,

19 Defendants.
20
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Case No.:

**DECLARATION OF PETER STERLING
IN SUPPORT OF MCDONALD'S
NOTICE OF REMOVAL
[REDACTED VERSION]**

DECLARATION OF PETER STERLING

I, PETER STERLING, declare:

1. My name is Peter Sterling. I am over the age of 18 and base this declaration on my personal knowledge of the facts discussed herein. This declaration is given in support of the Notice of Removal of Defendants McDonald's Corporation and McDonald's USA, LLC (collectively, "McDonald's").

2. I am Vice President of Marketing for McDonald's and have served in that capacity for nine years. I have been with McDonald's since 1990. In this position, I am familiar with McDonald's Happy Meal program and its associated costs, including costs related to the toys, packaging and advertising. I have reviewed Plaintiff's Amended Complaint and am aware that Plaintiff seeks, among other things, a declaration that McDonald's Happy Meal advertising violates certain consumer protection laws in California and an injunction to prevent "McDonald's from continuing to advertise Happy Meals to children featuring toys" in California (*See* Am. Compl., Relief Requested ¶3). In the paragraphs below, I have assessed the potential costs to McDonald's if a court were to grant the requested relief.

3. McDonald's Corporation and McDonald's USA, LLC are both incorporated in Delaware. Furthermore, each is headquartered in Oak Brook, Illinois and McDonald's out-of-state operations are supervised from these headquarters. Additionally, the majority of McDonald's executive and administrative functions are performed at its headquarters in Oak Brook, Illinois. Thus, McDonald's principal place of business is Oak Brook, Illinois.

4. As of December 31, 2010, there were 14,043 McDonald's restaurants in the United States. California alone had 1,337 McDonald's restaurants as of December 31, 2010. Thus, McDonald's California locations comprise approximately 9.5% of the total McDonald's restaurants in the United States.

5. In the average year, approximately [REDACTED] Happy Meals are sold in California. McDonald's sold [REDACTED] Happy Meals in California in 2009 and 2010 respectively.

//

6. McDonald's Happy Meals, including those sold in California, currently include a choice of a hamburger, cheeseburger, or Chicken McNuggets; a beverage choice of either low-fat white or low-fat chocolate milk, apple juice, or a 12oz. drink; a side item choice of Apple Dippers or French fries; and a toy.

7. If a court were to grant to the relief requested in the Amended Complaint, the amount in controversy, would exceed \$5 million. McDonald's calculates that the cost of complying with the injunction would be [REDACTED]

TELEVISION ADVERTISING

8. McDonald's and its franchisees currently advertise the Happy Meal on television using national campaigns. That is, McDonald's and its franchisees buy advertising space from cable stations to run Happy Meal advertisements on a nationwide basis. As a result, every market -- including California -- sees the same Happy Meal advertisements.

9. The Happy Meal television advertising campaign depicts a meal consisting of four-piece Chicken McNuggets, Apple Dippers, low-fat white milk and a toy.

10. If McDonald's were enjoined from advertising Happy Meals with toys in California, McDonald's and its franchisees would have to change the practice of purchasing nationwide advertising for the Happy Meal program. Cable stations do not have the ability to "block" or otherwise prevent nationwide advertising from running in California. In other words, McDonald's and its franchisees cannot simply instruct the cable stations not to run Happy Meal advertisements that do not feature toys in California, while continuing to run national advertisements in the rest of the country with Happy Meals featuring toys.

11. In order to run separate Happy Meal advertising that does not feature toys in California, while advertising Happy Meals with toys in the rest of the country (thereby replicating McDonald's current advertising reach), McDonald's and its franchisees would have to purchase all of its Happy Meal advertising on a local and regional basis rather than on a nationwide basis.

12. Local and regional advertising space on cable channels is much more expensive than national advertising on an aggregate basis. Specifically, it would cost McDonald's and its franchisees [REDACTED] more to buy advertising on a local and regional basis as opposed to on

1 a nationwide basis.

2 13. It is [REDACTED] more expensive to purchase advertising on a local or regional
3 basis because such advertising requires McDonald's and its franchisees to buy time from
4 numerous individual local and regional stations, cable operators, and third-party sellers as opposed
5 to making one national purchase.

6 14. McDonald's national Happy Meal advertising is purchased by a cooperative
7 composed of the owner/operators of the restaurants. Through its subsidiaries, McDonald's owns
8 and operates 11% of the restaurants in the U.S., and the remaining 89% of the restaurants are
9 franchised to independent owner/operators. McDonald's, therefore, would incur 11% of the cost
10 increase described in paragraphs 12 and 13 above, which amounts to [REDACTED].

11 15. To summarize, if McDonald's were enjoined from advertising Happy Meals with
12 toys in California, McDonald's would incur an additional expense of [REDACTED] to replicate its
13 current advertising reach. This does not include the loss of ratings guarantees, advertising
14 positioning within blocks of advertising ("pods"), flexibility, and competitive separation, all of
15 which McDonald's would suffer should the Court enter Plaintiff's injunction.

16 TOYS

17 16. The development and manufacture of McDonald's Happy Meal toys occurs well in
18 advance of their inclusion in Happy Meals. For example, McDonald's has already developed and
19 authorized the manufacture of toys for the next twelve months. Approximately [REDACTED] of those
20 toys are intended for use by McDonald's restaurants in California.

21 17. There are multiple steps between selecting a particular Happy Meal toy and
22 ultimately having toys in the restaurants for inclusion in Happy Meals. Those steps include (but
23 are not limited to) licensing, designing the toys, manufacturing, shipping the toys to the U.S., and
24 distributing the toys to individual restaurants. At any given point in time, a number of different
25 Happy Meal toys are in various stages of this process.

26 18. After the toys are licensed and designed, McDonald's suppliers contract for the
27 manufacture of the toys. A supplier then sells the toys to distribution centers, who in turn sell the
28 toys to individual McDonald's restaurants for inclusion in the Happy Meals. It costs McDonald's

1 restaurants [REDACTED] to purchase a single toy. This cost includes, but is not limited to, the raw
2 materials to make the toy, labor, safety testing, quality assurance, transport and packaging.

3 19. At any given time, at least one year's worth of toys are in the chain of production
4 so that McDonald's and its franchisees would lose the cost of the toy if a court prevented
5 McDonald's from including toys in California's Happy Meals.¹

6 20. McDonald's could not attempt to recoup any of these losses by selling the toys to
7 another business. The licensing agreements governing the use of the toys limit their use to
8 inclusion in Happy Meals. These toys would have to be destroyed.

9 21. Because [REDACTED] toys at a cost of [REDACTED] each are destined for California, if
10 granting the requested relief prevented McDonald's from including toys in Happy Meals,
11 McDonald's would have to incur a loss for a portion of the [REDACTED] it spent on toys that could
12 no longer be used in California.

13 22. Specifically, McDonald's would have to incur a loss of at least [REDACTED] of the
14 [REDACTED] (11% of [REDACTED]) because through its subsidiaries, McDonald's owns and operates
15 11% of the restaurants in the U.S.

16 23. There are also fixed costs associated with the development of each Happy Meal
17 toy. Such costs include costs associated with licensing, designing and developing the toys. If
18 McDonald's were enjoined from including toys in its California Happy Meals, it would have to
19 bear a larger portion of these fixed costs.

20 24. At the present time, toys are included with Happy Meals in restaurants in all fifty
21 states and in the District of Columbia. If a court were to prevent McDonald's from including toys
22 in Happy Meals in California, the fixed costs related to producing toys would have to be spread
23 across restaurants in forty-nine states, plus the District of Columbia, instead of restaurants in fifty
24 states. The cost of the toys to the restaurants in the forty-nine states and D.C. would increase by
25 1.2 cents per toy.

26
27 ¹ Plaintiff's Amended Complaint asks the Court to declare that McDonald's current practices
28 violate California law. It is unclear whether Plaintiff is seeking to prevent McDonald's from
including toys in Happy Meals in California, but it is assumed for purposes of removal that
Plaintiff seeks such relief.

1 I swear under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed this 2nd day of February 2011, at Goleta, California.
3
4
5

6 LEGAL02/32444401v1


Peter Sterling